

CHAPTER 440

DEPARTMENT OF REGULATION AND LICENSING

SUBCHAPTER I
GENERAL PROVISIONS

440.01	Definitions.
440.02	Bonds.
440.03	General duties and powers of the department.
440.035	General duties of examining boards.
440.04	Duties of the secretary.
440.045	Disputes.
440.05	Standard fees.
440.06	Refunds and reexaminations.
440.09	License period.
440.20	Disciplinary proceedings.

440.25 Judicial review.

SUBCHAPTER II
PRIVATE DETECTIVES

440.26 Private detectives, investigators and security personnel; licenses and permits.

SUBCHAPTER III
PROFESSIONAL FUND RAISERS AND PROFESSIONAL SOLICITORS

440.41 Solicitation and collection of funds for charitable purposes.

SUBCHAPTER IV
PEDDLERS

440.51 Statewide peddler's licenses for ex-soldiers.

SUBCHAPTER I

GENERAL PROVISIONS

440.01 Definitions. (1) In chs. 440 to 459, unless the context requires otherwise:

(a) "Department" means the department of regulation and licensing.

(b) "Grant" means the substantive act of the examining board, division or section, of approving the applicant for registration, certification or licensure and the preparing, executing, signing or sealing of the certificate of registration or license.

(c) "Issue" means the procedural act of the department of transmitting the certificate or license to the registrant.

(d) To "limit" a license, permit or certificate means to impose conditions and requirements upon the holder thereof, and to restrict the scope of the holder's practice.

(e) "Reprimand" means to publicly warn the holder of a license, permit or certificate.

(f) To "revoke" a license, permit or certificate means to completely and absolutely terminate the license, permit or certificate, and all rights, privileges and authority previously conferred thereby.

(g) "Secretary" means the secretary of regulation and licensing.

(h) To "suspend" a license, permit or certificate means to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by a grant of a license, permit or certificate.

(2) In this subchapter "examining board" includes the board of nursing.

History: 1977 c. 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45) Procedural due process and the separation of functions in state occupational licensing agencies. 1974 WLR 833.

440.02 Bonds. Members of the staff of the department who are assigned by the secretary to collect moneys shall be bonded in an amount equal to the total receipts of the department for any month.

440.03 General duties and powers of the department. (1) The department may adopt rules defining uniform procedures to be used by the department, the real estate board and all examining boards attached to the department for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

(2) The department may provide examination development services, consultation and technical assistance to other state agencies, federal agencies, counties, cities, villages, towns, national or regional organizations of state licensing

agencies, similar licensing agencies in other states, national or regional accrediting associations, and nonprofit organizations. The department may charge a fee sufficient to reimburse the department for the costs of providing such services. In this subsection, "nonprofit organization" means a nonprofit corporation as defined in s. 181.02 (4) and an organization exempt from tax under 26 USC 501.

(3) If the secretary reorganizes the department, no modification may be made in the powers and responsibilities of the examining boards attached to the department under s. 15.405.

(4) The department may issue subpoenas for the attendance of witnesses and the production of documents or other materials prior to the commencement of disciplinary proceedings.

(5) The department may investigate allegations of negligence by physicians licensed to practice medicine and surgery under ch. 448.

(6) The department shall have access to any information contained in the reports filed with the medical examining board and the board of nursing under s. 655.045, as created by 1985 Wisconsin Act 29, and s. 655.26.

History: 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340.

440.035 General duties of examining boards. Each examining board attached to the department shall:

(1) Independently exercise its powers, duties and functions prescribed by law with regard to rule-making, licensing, certifying and regulation.

(2) Be the supervising authority of all personnel, other than shared personnel, engaged in the review, investigation or handling of information regarding qualification of applicants for license, examination questions and answers, accreditation, investigation incident thereto, and disciplinary matters affecting licensees, or in the establishing of regulatory policy or the exercise of administrative discretion with regard to qualification or discipline of applicants or licensees or accreditation.

(3) Maintain, in conjunction with their operations, in central locations designated by the department, all records of the examining boards pertaining to the functions independently retained by them.

(4) Compile and keep current a register of the names and addresses of all licensees to be retained by the department and which shall be available for public inspection during the times specified in s. 230.35 (6) (a).

History: 1977 c. 418 ss. 25, 793, 929 (41); 1979 c. 32 s. 92 (1); 1979 c. 34.

440.04 Duties of the secretary. The secretary shall:

(1) Centralize, at the capital and in such district offices as the operations of the department and the attached examining boards require, the routine housekeeping functions required by the department and the examining boards.

(2) Provide the bookkeeping, payroll, accounting, and personnel advisory services required by the department and the legal services, except for representation in court proceedings and the preparation of formal legal opinions, required by the attached examining boards.

(3) Control the allocation, disbursement and budgeting of the funds received by the examining boards in connection with their licensing, certifying and related activities.

(4) Employ, assign and reassign such staff as are required by the department and the attached examining boards in the performance of their functions.

(5) With the advice of the examining boards:

(a) Provide the department with such supplies, equipment, office space and meeting facilities as are required for the efficient operation of the department.

(b) Make all arrangements for meetings, hearings and examinations.

(c) Provide such other services as the examining boards request.

(6) Appoint outside the classified service an administrator for any division established in the department and a director for any bureau established in the department as authorized in s. 230.08 (2). The secretary may assign any bureau director appointed in accordance with this subsection to serve concurrently as a bureau director and a division administrator.

History: 1977 c. 418 s. 26; 1979 c. 34; 1981 c. 20; 1985 a. 29.

440.045 Disputes. Any dispute between an examining board and the secretary shall be arbitrated by the governor or the governor's designee after consultation with the disputants.

History: 1977 c. 418 s. 27; 1979 c. 34

Relationship between department, cosmetology examining board and governor discussed. 70 Atty. Gen. 172

440.05 Standard fees. The following standard fee schedule applies to all licenses, permits and certificates issued under chs. 440 to 459, except s. 440.41 or unless otherwise specifically provided by statute:

(1) Examination: The fee for examination for the initial license, permit, certificate or registration shall be an amount equal to the actual cost of the examination, as determined by the department, but not less than \$40. The initial license, permit, certificate or registration shall be granted to applicants upon successful completion of the examination and upon completion of other applicable requirements. If an examination is not required, the initial license shall be granted upon payment of a \$40 fee if the applicant is otherwise qualified.

(2) Reciprocal license, permit, certificate or registration: \$50.

(3) (a) Renewals: The fee for renewal of a license, permit, certificate or registration for each of the following occupations shall be:

1. Certified public accountants, \$43.
2. Public accountants, \$43.
3. Accounting firms, \$50.
4. Barber instructor, \$57.
5. Master barber, \$57.
6. Barber shop manager, \$57.
7. Shop manager location, \$57.
8. Chiropractors, \$71.
9. Beauty salons, \$50.

10. Managing cosmetologists, \$38.

11. Cosmetology operators, \$38.

12. Cosmetology instructors, \$38.

13. Electrologists, \$38.

14. Manicurists, \$38.

15. Electrolysis salons, \$50.

16. Cosmetology schools, \$50.

17. Itinerant cosmetologist, \$38.

18. Dentists, \$35.

19. Dental hygienists, \$35.

20. Designers, \$33.

21. Land surveyors, \$33.

22. Architect/engineer corporations, \$50.

23. Architect corporations, \$50.

24. Engineering corporations, \$50.

25. Architects, \$33.

26. Professional engineers, \$33.

27. Funeral directors, \$58.

28. Funeral establishments, \$50.

29. Funeral director certified in good standing, \$58.

30. Embalmers, \$58.

31. Hearing aid dealers/fitters, \$119.

32. Licensed practical nurses, \$32.

33. Registered nurses, \$32.

34. Nursing home administrators, \$53.

35. Optometrists, \$63.

36. Registered pharmacists, \$57.

37. Assistant pharmacists, \$57.

38. Pharmacies, \$50.

39. Drug manufacturers permit, \$50.

40. Distributor of dangerous drugs, \$50.

41. Medicine/surgery (MD), \$82.

42. Medicine/surgery (DO), \$82.

43. Doctor of osteopathy/surgery, \$82.

44. Physicians assistants, \$82.

45. Physical therapists, \$82.

46. Podiatrists, \$82.

47. Private detective agencies, \$50.

48. Private detectives, \$124.

49. Psychologists, \$74.

50. Private practice school psychologist, \$74.

51. Real estate broker, \$45.

52. Real estate salesperson, \$45.

53. Cemetery associations, \$50.

54. Cemetery salespersons, \$45.

55. Veterinarians, \$50.

56. Animal technicians, \$50.

(4) Penalty for late renewal, less than 30 days beyond the expiration date: \$5.

(5) Penalty for late renewal, 30 days or more beyond the expiration date: \$25.

(6) Apprentice, journeyman, student and temporary license, permit or certificate, and renewal thereof: \$10.

(7) Replacement of lost certificate, name or address change on certificate, issuance of duplicates and transfer fee: \$5.

(8) Initial or renewal license, permit, certificate or registration for funeral establishments, schools, barber shops, beauty salons, drug stores, corporations, partnerships, business firms and branch offices: \$50.

(9) Endorsement of licensees to other states: \$10.

History: 1977 c. 29, 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1983 a. 27; 1985 a. 29.

440.06 Refunds and reexaminations. The secretary may establish uniform procedures for refunds of fees paid under s. 440.05 and uniform procedures and fees for reexaminations under chs. 440 to 459.

History: 1977 c. 418; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45)

440.09 License period. All licenses, permits and certificates issued or renewed under chs. 440 to 459 shall be renewed for a 2-year period, except:

(1) Apprentice, student and temporary licenses, permits and certificates.

(2) Registrations under s. 440.41.

(3) Certificates under ch. 442.

History: 1977 c. 29; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1979 c. 337, 355; 1981 c. 356.

440.20 Disciplinary proceedings. (1) Any person may file a complaint before any examining board and request any examining board to commence disciplinary proceedings against any permittee, registrant or license or certificate holder.

(2) Any person who in good faith testifies before the department or any examining board or otherwise provides the department or any examining board with information concerning possible unprofessional conduct, negligence in treatment or any other violation by a person holding a license, permit, certificate or registration issued by the department is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such information. The good faith of any person specified in this subsection shall be presumed in any civil action and an allegation that such a person has not acted in good faith must be proven by clear and convincing evidence.

(3) The burden of proof in disciplinary proceedings before the department or any examining board is clear and convincing evidence, for proceedings concerning violations occurring before January 1, 1986, and on or after July 1, 1989, and a preponderance of the evidence, for proceedings concerning violations occurring on or after January 1, 1986, and before July 1, 1989.

History: 1977 c. 418; 1979 c. 34; 1985 a. 29.

See note to 452.10, citing 68 Atty. Gen. 30.

"Preponderance of the evidence" burden of proof under (3) does not violate due process rights of licensee. OAG 16-86.

440.25 Judicial review. The department may seek judicial review under ch. 227 of any final disciplinary decision of the medical examining board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the medical examining board, the attorney general may represent the board. If the attorney general declines to represent the board, the board may retain special counsel which shall be paid for out of the appropriation under s. 20.165 (1) (g).

History: 1985 a. 340.

SUBCHAPTER II

PRIVATE DETECTIVES

440.26 Private detectives, investigators and security personnel; licenses and permits. (1) **LICENSE OR PERMIT REQUIRED.** No person may advertise, solicit or engage in the business of operating a private detective agency, or act as a private detective, investigator, special investigator or private security person, or act as a supplier of private security personnel, or solicit business or perform any other type of service or investigation as a private detective or private security person, or receive any fees or compensation for acting as such, without first filing an application and the necessary bond or liability policy with the department and being issued a license or a permit under this section. No person may be so licensed unless the person is over 18 years of age.

(1m) **DEFINITION.** In this section, "private security person" or "private security personnel" means any private police, guard or any person who stands watch for security purposes.

(2) **TYPES OF LICENSES; APPLICATION; APPROVAL.** (a) **Types of licenses.** There are 2 types of licenses: a private detective agency license and a private detective license.

1. A private detective agency license may be issued to an individual, partnership or corporation. An individual, the members of a partnership and the officers or directors of a corporation, having a private detective agency license, are not required to have a private detective license unless actually engaged in the work of a private detective.

2. A private detective license may only be issued to an individual who is an owner, co-owner or employe of a licensed private detective agency.

(b) **Applications.** The department shall prescribe forms for original and renewal applications. All applications shall be executed under oath. A partnership application shall be executed by all members of the partnership. A corporate application shall be executed by the secretary and the president or vice president and, in addition, in the case of a foreign corporation, by the registered agent.

(c) **Approval.** The department shall prescribe, by rule, such qualifications as it deems appropriate, with due regard to investigative experience, special professional education and training and other factors bearing on professional competence. Subject to ss. 111.321, 111.322 and 111.335, no person convicted of a felony is eligible for a license for 5 years thereafter. The department, in considering applicants for license, shall seek the advice of the appropriate local law enforcement agency or governmental official, and conduct such further investigation, as it deems proper to determine the competence of the applicant.

(3) **ISSUANCE OF LICENSES; FEES.** Upon receipt and examination of an application executed under sub. (2), and after any investigation deemed necessary, the department shall if it deems the applicant qualified, grant the proper license upon payment of the fee specified in s. 440.05 (8) if the applicant is an agency or upon payment of the fee specified in s. 440.05 (1) if the applicant is a private detective. No license shall be issued for a longer period than 2 years, and the license of a private detective shall expire on the expiration date of the agency's license even though the private detective's license may not have been in effect for a full 2 years. Renewals of the original licenses issued under this section shall be issued in accordance with renewal forms prescribed by the department and shall be accompanied by the fees specified in s. 440.05 (3) to (5) and (8). The department may not renew a license unless the applicant provides evidence that the applicant has in force at the time of renewal the bond or liability policy specified in this section.

(4) **BONDS OR LIABILITY POLICIES REQUIRED.** No license may be issued under this section until a bond or liability policy, approved by the department, in the amount of \$10,000 if the applicant for the license is an agency and includes all principals, partners or corporate officers, or in the amount of \$2,000 if the applicant is a private detective, has been executed and filed with the department. Such bonds or liability policies shall be furnished by an insurer authorized to do a surety business in this state in a form approved by the department.

(5) **EXEMPTIONS; PRIVATE SECURITY PERMIT.** This section does not apply to any person employed, directly or indirectly by the state or municipality as defined in s. 345.05 (1) (c), or to any employe of a railroad company under s. 192.47, or employes of commercial establishments, who operate exclusively on their premises. An employe of any licensed agency

SUBCHAPTER III

PROFESSIONAL FUND RAISERS AND
PROFESSIONAL SOLICITORS

doing business in this state as a supplier of uniformed security personnel to patrol exclusively on the private property of industrial plants, business establishments, schools, colleges, hospitals, sports stadiums, exhibits and similar activities are exempt from the license requirements of this section while engaged in such employment, if the person obtains a private security permit under this section. The agency shall furnish upon request an up-to-date record of its employees to the chief of police or other local law enforcement official designated by the department for the municipality wherein such activities take place. Such record shall include the name, residence address, date of birth and a physical description of each such employe together with a recent photograph and 2 fingerprint cards bearing a complete set of fingerprints of the employe, and, subject to ss. 111.321, 111.322 and 111.335, no person shall be eligible for a private security permit who has been convicted in this state or elsewhere of a felony within 5 years preceding application. The agency shall notify the chief of police or other designated official in writing within 5 days of any change of the residence address or of the termination of employment of such person. A private security permit shall be issued or denied within 48 hours of application by the chief of police or other designated official. The permit shall remain valid unless for just cause revoked by the chief of police or other designated official issuing the permit for just cause. Upon denial or revocation of a permit, appeal may be taken to the department. For each application for a private security permit filed with the chief of police or other designated official the agency shall remit a fee of \$2 to the municipality issuing the permit.

(6) **DISCIPLINE.** Subject to the rules adopted under s. 440.03 (1), the department may reprimand the holder of a license or permit issued under this section or revoke, suspend or limit the license or permit of any person who has been convicted of a crime, subject to ss. 111.321, 111.322 and 111.335, or has engaged in conduct reflecting adversely on his or her professional qualification, or has made a false statement in connection with any application for a license or permit under this section.

(7) **DEFINITIONS.** (a) "Private detective" does not include attorneys, law students or law school graduates employed by an attorney or persons directly employed by an attorney or firm of attorneys whose work as private detective is limited to such attorney or firm or persons directly employed by an insurer or a retail credit rating establishment. A person who accepts employment with more than one law firm shall be subject to the licensing provisions of this section.

(8) **PENALTIES.** Any person, acting as a private detective, investigator or private security person, or who employs any person who solicits, advertises or performs services in this state as a private detective or private security person, or investigator or special investigator, without having procured the license or permit required by this section, may be fined not less than \$100 nor more than \$500 or imprisoned not less than 3 months nor more than 6 months or both. Any agency having an employe, owner, officer or agent convicted of the above offense may have its agency license revoked or suspended by the department. Any person convicted of the above offense shall be ineligible for a license for one year.

History: 1971 c. 213 s. 5; 1977 c. 29, 125, 418; 1979 c. 102 ss. 45, 236 (3); 1981 c. 334 s. 25 (1); 1981 c. 380, 391; 1983 a. 189 s. 329 (31); 1983 a. 273; 1985 a. 128, 135.

Cross Reference: See 134.57 for requirement that all settlements made with an employe or fiduciary agent, where the detective is to be paid a percentage of the amount recovered, must be submitted to the circuit court for approval.

See note to 340.01, citing 61 Atty. Gen. 421.

Police officers working as private security persons are subject to same licensing provisions in this section as are non-police officers. 69 Atty. Gen. 226.

440.41 Solicitation and collection of funds for charitable purposes. (1) DEFINITIONS. As used in this section unless the context requires otherwise:

(a) "Charitable organization" includes any benevolent, philanthropic, patriotic or eleemosynary person or one purporting to be such.

(b) "Contribution" means the promise or grant of any money or property of any kind or value, including net proceeds from sales of tickets or goods.

(c) "Professional fund raiser" includes any person who for compensation or other consideration plans, conducts, manages, or carries on any drive or campaign in this state for the purpose of soliciting contributions for or on behalf of any charitable organization or any other person, or who engages in the business of, or holds himself or herself out to persons in this state as independently engaged in the business of soliciting contributions for such purpose. A bona fide officer or employe of a charitable organization is not deemed a professional fund raiser unless his or her salary or other compensation is computed on the basis of funds to be raised, or actually raised.

(d) "Professional solicitor" includes any person who is employed or retained for compensation by a professional fund raiser to solicit contributions for charitable purposes from persons in this state.

(1m) **VETERANS ORGANIZATIONS EXEMPT.** This section does not apply to veterans organizations incorporated under ch. 188 or chartered under federal law.

(2) **REGISTRATION OF CHARITABLE ORGANIZATIONS.** (a) Every charitable organization, except as otherwise provided in sub. (3), which intends to solicit contributions from persons in this state by any means whatsoever shall, prior to any solicitation, file with the department upon forms prescribed by it, the following information:

1. The name under which the charitable organization intends to solicit contributions.

2. The names and address of officers, directors, trustees, and executive personnel.

3. The names and addresses of any professional fund raiser and professional solicitors who act or will act on behalf of the charitable organization, together with copies of contracts or statements setting forth the terms of the arrangements for salaries, bonuses, commissions or other remuneration to be paid to the professional fund raisers and professional solicitors. Where any such contract or arrangement is executed after the filing of the registration statement, a copy thereof shall be filed within 10 days of the date of execution.

4. The general purposes for which the charitable organization is organized.

5. The purposes for which the contributions to be solicited will be used.

6. The period of time during which the solicitation will be made.

7. The addresses of the organization and the addresses of any offices in this state. If the organization does not maintain a principal office in this state, the name and address of any person in this state having custody of any of its financial records.

8. Where and when the organization was legally established, its tax exempt status and a copy of its latest filed federal tax form.

9. Whether the organization is authorized by any other governmental authority to solicit contributions and whether

it is or has ever been enjoined by any court from soliciting contributions or has lost its authorization to so solicit contributions.

10. Board, group or individual having final discretion as to the distribution and use of contributions received.

11. Such other information as may be necessary or appropriate in the public interest or for the protection of contributors.

(am) Every registered organization shall notify the department within 10 days of any change in the information required to be furnished by such organization under this section.

(b) The registration form, and any other documents prescribed by the department, shall be signed by the president or other authorized officer and the chief fiscal officer of the charitable organization.

(c) For filing such registration, the department shall receive a fee of \$10, to be paid at the time of registration.

(d) Such registration shall remain in effect unless it is either canceled by the department with the advice and consent of the attorney general or withdrawn by the organization.

(e) In no event shall a registration of a charitable organization continue, or be continued, in effect after the date such organization should have filed, but failed to file, an annual report, and such organization shall not be eligible to file a new registration until it shall have filed the required annual report with the department and such additional information concerning the activities of the organization during any interim period not covered in reports filed with the department. If such report is subsequently filed such organization may file a new registration.

(3) EXEMPT PERSONS. The following persons shall not be required to register with the department:

(a) Corporations organized under the religious corporations law, and other religious agencies and organizations, and charities, agencies, and organizations operated, supervised or controlled by or in connection with a religious organization.

(b) Educational institutions when solicitation of contributions is confined to its student body and their families, alumni, faculty and trustees.

(c) Any charitable organization which does not intend to solicit and receive and does not actually receive contributions in excess of \$4,000 during any 12-month period ending December 31 of any year, provided all of its fund raising functions are carried on by persons who are unpaid for such services. However, if the gross contributions received by such charitable organization during any 12-month period ending December 31 of any year is in excess of \$4,000, it shall, within 30 days after the date it has received total contributions in excess of \$4,000, register with the department under sub. (2). Fraternal, civic, benevolent, patriotic and social organizations which solicit contributions solely from their membership shall not be required to register with the department.

(d) Persons requesting any contributions for the relief of any individual, specified by name at the time of the solicitation, if all of the contributions collected, without any deductions whatsoever, are turned over to the named beneficiary.

(e) Any local, county or area division of a charitable organization supervised and controlled by a superior or parent organization, incorporated, qualified to do business, or doing business within this state, if the superior or parent organization files a registration statement on behalf of the local, county or area division in addition to or as part of its own registration statement. Where a registration statement has been filed by a superior or parent organization, it shall file the annual report required under sub. (4) on behalf of the local, county or area division in addition to or as part of its

own report, but the accounting information required under sub. (4) shall be set forth separately and not in consolidated form with respect to every local, county or area division which raises or expends more than \$500 during any 12-month period ending December 31 of any year.

(f) Any state agency, city, village, town or school board, as defined in s. 115.001 (7).

(4) REPORTS BY REGISTERED CHARITABLE ORGANIZATIONS.

(a) Every charitable organization registered under sub. (2) which receives in any 12-month period ending December 31 contributions in excess of \$50,000 and every charitable organization whose fund raising functions are carried on by any person who is paid for the services shall file a written report with the department upon forms prescribed by the department, on or before June 30 of each year if its books are kept on a calendar basis, or within 6 months after the close of its fiscal year if its books are kept on a fiscal year basis, which shall include a financial statement covering the immediately preceding 12-month period of operation. The financial statement shall fairly represent the financial operations of the organization and contain such information as the department requires in sufficient detail to permit public evaluation of its operations and shall include but not be limited to a balance sheet and statement of income and expense and shall be consistent with forms furnished by the department clearly setting forth the following: gross receipts and gross income from all sources, broken down into total receipts and income from each separate solicitation project or separate special event; cost of administration; cost of solicitation; cost of programs designed to inform or educate the public; funds or properties transferred out of this state, with explanation as to recipient and purpose; total net amount disbursed or dedicated for each major purpose, charitable or otherwise. The report shall also include a statement of any changes in the information required to be contained in the registration form filed on behalf of the organization. The report shall be signed by the president or other authorized officer and the chief fiscal officer of the organization, and shall be accompanied by an opinion signed by an independent certified public accountant that the financial statement fairly represents the financial operations of the organization in sufficient detail to permit public evaluation of its operation.

(b) Every organization registered under sub. (2) which receives in any 12-month period ending December 31 contributions not in excess of \$50,000 and all of whose fund raising functions are carried on by persons who are unpaid for such services shall file a written report with the department upon forms prescribed by the department on or before June 30 of each year if its books are kept on a calendar basis, or within 6 months after the close of its fiscal year if its books are kept on a fiscal year basis, which shall include a financial statement covering the immediately preceding 12-month period of operation fairly representing the financial operations of the organization and contain such information as the department requires in sufficient detail to permit public evaluation of its operations and shall include but not be limited to a statement of the organization's gross receipts from contributions, fund raising expenses including a separate statement of the cost of any goods, services or admissions supplied as part of its solicitations, and the disposition of the net proceeds from contributions. The report shall also include a statement of any changes in the information required to be contained in the registration form filed on behalf of the organization. The report shall be signed by the president or other authorized officer and the chief fiscal officer of the organization who shall certify that the statements are true and correct to the best of their knowledge.

(c) For any fiscal or calendar year of any organization registered pursuant to sub. (2) in which such organization would have been exempt from registration pursuant to sub. (3) if it had not been so registered, or in which it did not solicit or receive contributions, such organization shall file, on or before June 30 of each year if its books are kept on a calendar basis, or within 6 months after the close of its fiscal year if its books are kept on a fiscal year basis, instead of the reports required by par. (a) or (b), a report in the form of an affidavit of its president and chief fiscal officer stating the exemption and the facts upon which it is based or that such organization did not solicit or receive contributions in such year. The affidavit shall also include a statement of any changes in the information required to be contained in the registration form filed on behalf of such organization.

(d) The department, with the advice and consent of the attorney general, shall cancel the registration of any organization which fails to comply with par. (a), (b), (c) or (e) within the time prescribed, or fails to furnish additional information as is requested by the department or attorney general within the required time. The department may grant an organization a 3-month extension for filing a financial report. Notice of cancellation shall be mailed to the registrant at least 15 days before the effective date thereof.

(e) Any charitable organization which exceeds \$500 in gross receipts from each separate solicitation project or separate special event, which disburses, for the total cost of solicitation for each such separate solicitation project or separate special event, more than 25% of gross receipts from each project or separate special event, shall file a written report as described in par. (a) with the department within 30 days of the completion of such project or separate special event.

(f) The department shall semiannually compile and make public lists of the charitable organizations registered indicating the gross receipts and total solicitation costs for each organization and each project or special event in each organization in dollar values and percentages.

(g) For filing such annual financial statement, the department shall receive a fee of \$10, to be paid at the time of filing.

(5) PROFESSIONAL FUND RAISERS; REGISTRATION AND BOND REQUIRED. No person shall act as a professional fund raiser for a charitable organization required to register pursuant to sub. (2) until the person has first registered with the department. Applications for such registration shall be in writing, under oath, in the form prescribed by the department and shall be accompanied by an annual fee of \$50. The applicant shall at the time of making application, file with, and have approved by, the department a bond in which the applicant shall be the principal obligor, in the sum of \$5,000, with one or more sureties whose liability in the aggregate as such sureties will at least equal such sum. The bond shall run to the department for the use of the state and to any person who may have a cause of action against the obligor of such bond for any malfeasance or misfeasance in the conduct of such solicitation. Registration when effected shall be for a period of one year, or a part thereof, expiring on August 31, and may be renewed upon the filing of the bond and fee prescribed herein for additional one-year periods.

(6) CONTRACTS TO BE RETAINED. All contracts entered into by such professional fund raisers and charitable organizations shall be in writing and true and correct copies shall be filed with the department and kept on file in the offices of the charitable organization and the professional fund raiser for a period of 3 years from the date the solicitation of contributions provided for actually commences. The contracts shall

be available for inspection and examination by any authorized agency.

(7) PROFESSIONAL SOLICITOR; REGISTRATION REQUIRED. Every professional solicitor employed or retained by a professional fund raiser required to register pursuant to this subsection shall, before accepting employment by such professional fund raiser, register with the department. Application for such registration shall be in writing, under oath, in the form prescribed by the department, and shall be accompanied by a fee of \$10. Such registration when effected shall be for a period of one year, or a part thereof, expiring on August 31, and may be renewed upon payment of the fee prescribed by this subsection, for additional one-year periods.

(8) ENFORCEMENT BY ATTORNEY GENERAL. (a) An action for violation of this section may be prosecuted in any circuit court of this state by the attorney general in the name of the state and in any such action, the attorney general shall exercise all the powers and perform all duties which the district attorney would otherwise be authorized to exercise or to perform therein.

(b) Whenever the attorney general has reason to believe that any charitable organization, professional fund raiser or professional solicitor is operating in violation of this section, or there is employed or is about to be employed in any solicitation or collection of contributions for a charitable organization any device, scheme or artifice to defraud or for obtaining money or property by means of any false pretense, representation or promise, in addition to any other action authorized by law, the department of justice may bring in any circuit court of this state an action in the name of the state against such charitable organization, professional fund raiser or professional solicitor, and any other person who has participated or is about to participate in such solicitation or collection by employing such device, scheme, artifice, false representation or promise, to enjoin such professional fund raiser or professional solicitor, or other person from continuing such solicitation or collection or engaging therein or doing any acts in furtherance thereof, or to cancel any registration statement previously filed with the department.

(9) DESIGNATION OF THE DEPARTMENT AS AGENT FOR SERVICE OF PROCESS; SERVICE OF PROCESS. Any charitable organization, professional fund raiser or professional solicitor resident or having his, her or its principal place of business without the state or organized under the laws of another state, that solicits contributions from people in this state, shall be deemed to have irrevocably appointed the secretary as its agent upon whom may be served any process directed to such charitable organization, professional fund raiser, professional solicitor or any partner, principal, officer or director thereof, in any action or proceeding brought by the attorney general under this section. Any such charitable organization, professional fund raiser or professional solicitor may file with the secretary a designation, in terms complying herewith, duly acknowledged, irrevocably appointing the department as his, her or its agent upon whom may be served any such process. Service of such process upon the secretary shall be made by personally delivering to and leaving with the secretary or the secretary's designee a copy thereof at his or her office and such service shall be sufficient service provided that notice of such service and a copy of such process are forthwith sent by the attorney general to such charitable organization, professional fund raiser or professional solicitor by registered mail with return receipt requested, at his, her or its office as set forth in the registration form required to be filed in the department under subs. (2), (5) and (8), or in default of the filing of such form, at the last address known to the attorney general. Service of such process shall be com-

plete 10 days after the receipt by the attorney general of a return receipt purporting to be signed by the addressee or a person qualified to receive his, her or its registered mail or, if acceptance was refused by the addressee or his, her or its agent, 10 days after the return to the attorney general of the original envelope bearing a notation by the postal authorities that receipt thereof was refused.

(10) UNAUTHORIZED USE OF NAMES WHEN SOLICITING OR COLLECTING CONTRIBUTIONS. (a) No person who is required to register pursuant to this section shall use the name of any other person for the purpose of soliciting contributions from persons in this state, without the written consent of such other person.

(b) A person is deemed to have used the name of another person for the purpose of soliciting contributions if such latter person's name is listed on any stationery, advertisement, brochure or correspondence of the charitable organization or his or her name is listed or referred to as one who has contributed to, sponsored or indorsed the charitable organization or its activities.

(c) Whoever violates this section may be fined not exceeding \$1,000 or imprisoned not more than 6 months or both.

History: 1973 c. 253; 1977 c. 418; 1979 c. 162 ss. 4, 38 (5), (7), (9); 1979 c. 221, 337; 1981 c. 314 s. 146; 1983 a. 36, 339; 1985 a. 128, 135; 1985 a. 218 s. 22.

Where persons retained to collect funds were paid one dollar for each collection and two dollars per day for automobile use, jury was entitled to find defendant outside the exception under (3) (c). *Blenski v. State*, 73 W (2d) 685, 245 NW (2d) 906.

The League of Women Voters of Wisconsin, Inc., and its local league organizations, fall within the definition of a "charitable organization" as defined in (1) (a) and, unless these organizations are "exempt persons" as described in (3), they must register with and submit annual reports to the department. 60 Atty. Gen. 454.

Department of regulation and licensing does not have the authority to transfer registrations under (7). 61 Atty. Gen. 238.

Maryland law requiring charities to obtain waiver from state if expenses exceed 25% of amount raised denied free speech rights of charities. Secretary of State of Md. v. J.H. Munson Co. 467 US 947 (1984).

The regulation of charitable fund raising and spending activities 1975 WLR 1159.

SUBCHAPTER IV

PEDDLERS

440.51 Statewide peddler's licenses for ex-soldiers. Any ex-soldier of the United States in any war, who has a 25% disability or more or has a cardiac disability recognized by the U.S. veterans administration, and any person disabled to the extent of the loss of one arm or one leg or more or who has been declared blind as defined under Title XVI of the social security act, shall, upon presenting proof to the department that she or he satisfies these conditions, be granted a special statewide peddler's license without payment of any fee. The person must have been a bona fide resident of this state for at least 5 years preceding the application, and shall while engaged in such business carry on her or his person the license and the proof required for its issuance, and a blind person shall also carry a picture of herself or himself which is not more than 3 years old. A license issued under this section shall not entitle a blind person to peddle for hire for another person.

History: 1977 c. 399.