

TITLE XLA.

Regulation And Licensing.

CHAPTER 440

DEPARTMENT OF REGULATION AND LICENSING

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SUBCHAPTER I GENERAL PROVISIONS

440.01 Definitions. In title XLA, unless the context requires otherwise:

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

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

(3) "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.

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

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.

SUBCHAPTER II PRIVATE DETECTIVES

440.26 Private detectives, agencies and employes; investigators, watchmen and guards. (1) LICENSE OR PERMIT REQUIRED.

No person shall advertise, solicit or engage in the business of operating a private detective agency, or act as a private detective, investigator, special investigator, private policeman, private guard or private watchman, or act as a supplier of private police, private guards or private watchmen, or solicit business or perform any other type of service or investigation as a private detective, private policeman, private guard or private watchman, 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 to be a watchman or guard under this section. No person shall be so licensed unless he is over 25 years of age as principal or owner of an agency and over 18 years of age if an individual agent.

(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 administrative rule, such standards of professional, educational and moral qualification as it deems appropriate, with due regard to investigative experience, special professional education and training and other factors bearing on professional competence and trustworthiness. No person convicted of a felony in this state or elsewhere shall be 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 character, competence and integrity 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 a fee of \$200 if the applicant is an agency or upon payment of a fee of \$10 if the applicant is a private detective. No license shall be issued for a longer period than one year, and the license of a private detective shall expire on the expiration date of the agency's license even though his license may not have been in effect for a full year. Renewals of the original licenses issued under this section shall be issued in accordance with renewal forms prescribed by the department, accompanied by the fees and bonds or liability policies herein specified.

(4) **BONDS OR LIABILITY POLICIES REQUIRED.** No license shall be issued pursuant to this section until a bond or liability policy, as approved by the department, in the amount of \$10,000 if the applicant for such 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 a surety or insurance company authorized to do business in this state in a form approved by the department.

(5) **EXEMPTIONS; WATCHMAN AND GUARD PERMIT.** This section shall not apply to any person employed, directly or indirectly by the state or municipality as defined in s. 345.05 (1) (a), 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 doing business in this state as a supplier of uniformed security guards, uniformed police or uniformed watchmen to patrol exclusively on the private property of industrial plants, business establishments, schools, colleges, hospitals, sports stadiums, exhibits and similar activities shall be exempt from the license requirements of this section while engaged in such employment, if such person obtains a watchman and guard permit under this section. Such agency shall furnish upon request an up-to-date record of its employes 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 such employe, and no one shall be eligible for a watchman and guard permit who has been convicted in this state or elsewhere of a felony within 5 years preceding his application. Such 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 watchman and guard permit shall be issued or denied within 48 hours of application by the chief of police or other designated official. Such 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 watchman and guard per-

mit 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) **REVOCATION OF LICENSES AND PERMITS.** If at any time a petition is presented to the department signed by 6 residents of this state requesting the revocation of a license or permit issued under this section, the department, after due notice, shall conduct a hearing and based upon the evidence presented take such action as is appropriate. If at any time such licensee or holder of a permit is convicted of a felony or if he engages in conduct reflecting adversely on his professional qualification, or makes a false statement in any application for a license or permit, the department after notice, hearing and proof thereof, shall revoke such license.

(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 insurance company 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.

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

(8) **PENALTIES.** Any person, acting as a private detective, investigator, private policeman or private guard, or who employs any person who solicits, advertises or performs services in this state as a private detective, private policeman or private guard, 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 a period of one year.

History: 1971 c. 213 s. 5.

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.

SUBCHAPTER III PROFESSIONAL FUND RAISERS AND PROFESSIONAL SOLICITORS

440.41 Solicitation and collection of funds for charitable purposes. (1) DEFINI-

TIONS. 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.

(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 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 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.

12. 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; and

(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 \$500 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 \$500, it shall within 30 days after the date it has received total contributions in excess of \$500 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.

(4) REPORTS BY REGISTERED CHARITABLE ORGANIZATIONS. (a) Every charitable organization registered pursuant to sub. (2) which

shall receive in any 12-month period ending December 31 of any year contributions in excess of \$10,000 and every charitable organization whose fund raising functions are not carried on solely 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 March 31 of each year if its books are kept on a calendar basis, or within 3 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. Such 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. Such report 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. 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 therein fairly represents the financial operations of the organization in sufficient detail to permit public evaluation of its operation.

(b) Every organization registered pursuant to sub. (2) which receives in any 12-month period ending December 31 of any year contributions not in excess of \$10,000 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 March 31 of each year if its books are kept on a calendar basis, or within 3 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 such 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. Such report 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. 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 therein 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 March 31 of each year if its books are kept on a calendar basis, or within 3 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 therein prescribed, or fails to furnish such additional information as is requested by the department or attorney general within the required time; except that the time may be extended by the department for a period not to exceed 3 months. Notice of such 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 he 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 thereof shall be 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 therein actually commences. Such contracts shall be available for inspection and examination by the department and other authorized agencies.

(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 the 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 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 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 him or his designee a copy thereof at his 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 or its office as set forth in the registration form required to be filed in the department pursuant to 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 complete 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 or its registered mail or, if acceptance was refused by the addressee or his 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 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.

SUBCHAPTER IV

ITINERANT MERCHANT TRUCKER

440.61 Itinerant merchant trucker. (1)

DEFINITIONS. In this section, unless context otherwise requires:

(a) "Person" means a natural person, firm, partnership, association, corporation, trust, lessee, trustee or receiver, as the context may require.

(b) The words "sales", "sell", "selling" or any grammatical forms thereof mean and include barter, trade or exchange in addition to the usual and ordinary meaning of said words; and this definition shall not be construed to limit any meanings of said words but shall extend such meanings.

(d) "Itinerant merchant trucker" means any person who buys or offers to buy or sells or offers to sell, in this state, at wholesale or retail any personal property, and transports the same upon any highway by use of a motor truck or other vehicles, and who at any time transports in said motor truck or other vehicle a net load exceeding 3,000 pounds, except as herein otherwise provided.

(e) "Established place of business" means any permanent warehouse, building or structure, at or from which a permanent business is carried on as such in good faith and not for the purpose of evading this section, and at which stocks of the property being transported are produced, stored or kept in quantities reasonably adequate for, and usually carried for, the requirements of such business, and which business is carried on regularly during normal business hours throughout the year, and shall not mean residences, tents, temporary stands or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement.

(2) **EXCEPTIONS.** The term "itinerant merchant trucker" as used in this section shall not mean or include the following:

(a) A person using a motor truck or other vehicle owned by him, whether operated by him or his agent, for the transportation of milk, dairy products, grain, fruits, vegetables, live stock, poultry or other agricultural products, produced by him, whether his residence be within or without this state.

(b) A person transporting property owned by him in a motor truck or other vehicle owned or leased by him, his agent or employe, whether operated by him, his agent or employe, when such transportation is incident to a business conducted by him at or from an established place of business operated by him, either within or without this state, and when such property is being transported to or from such established place of business.

(c) A person transporting property for his own consumption or use.

(d) A person duly licensed under ss. 440.81 to 440.84.

(e) Any person to whom a license has been issued pursuant to s. 78.09 or 78.47.

(3) **PROOF OF EXEMPTION.** (a) No person shall be exempt from the requirements of this section, except a person duly licensed under s. 78.09, 78.47 or 440.81 to 440.84, by reason of the provisions of sub. (2) unless he or the driver of the motor vehicle upon which his property is being transported, upon the request of any person, officer or judge charged with the enforcement of any of the laws of this state, signs and swears under oath before some person authorized by the laws of this state to swear persons under their oath, and delivers to such person, officer or judge a statement in writing clearly showing that the person claiming the exemption is entitled to one or more of the exemptions provided in this section.

(b) If the person claiming the exemption is not a natural person such statement shall be signed and sworn to by some natural person authorized to act for it or by the driver of the motor vehicle carrying the property. Such statement shall not be sufficient unless it shall contain in addition to any other necessary facts, the following of such facts as are material to the particular exemption claimed: The name of the person claiming the exemption and the name of the person signing such statement, and the business and residence addresses of both; where and when the products described in sub. (2) (a) were produced, and the place where they are to be delivered if known; the location of the established place of business, how long there established, and whether the premises where located are owned or leased by the person claiming the exemption; the kind of business there conducted; if the property has been sold prior to the commencement of the transportation, the name and address of the purchaser. The person, officer or judge receiving such statement shall promptly forward it to the department. Any person knowingly making any false, material statement shall be guilty of perjury and shall, upon conviction thereof be punished as provided by statute.

(c) A person licensed under s. 78.09, 78.47 or 440.81 to 440.84 and complying therewith, shall not be required to make the affidavit provided herein.

(4) **LICENSE REQUIRED.** No person shall engage in business or use any motor vehicle in this state as an itinerant merchant trucker, as defined in sub. (1) without obtaining from the department the license required by this section.

(5) **APPLICATION FOR LICENSE; FEES.** An application for a license to engage in business as an itinerant merchant trucker shall be made to the department upon forms to be prepared

by the department. A separate application and license shall be required for each motor vehicle to be operated. In addition to any other essential information required by the department, such application shall state the following: The name and legal status of the applicant, his business address; if a natural person, his residence address; if not a natural person, the names and business and residence addresses of the principal and managing officers, agents or partners; a general description of the business to be conducted and the area in which it will be conducted; an exact description of the motor vehicle to be used including the make, type, manufacturer's rated loading capacity, motor number, serial number, place where registered, and registration or license number. The fee for each license shall be \$200 annually for the fiscal year beginning with July first and ending on June 30th. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant if a natural person; if not a natural person, by some officer or partner authorized to act for him.

(6) **INSURANCE POLICIES AND BONDS REQUIRED.** No such license shall be issued by the department until the applicant shall have filed with each application, and the same shall have been approved by the department, the following insurance policies and bonds issued by an insurance company or bonding company authorized to do business within this state. Every insurance policy and bond filed with the department under this section shall contain an indorsement or provision that the same shall not be canceled by the obligor, shall not expire, and shall not become reduced in amount, until 10 days after notice thereof by registered U. S. mail has been sent to the department. Upon receipt of such notice the department shall immediately send the itinerant merchant at his last known address by registered U. S. mail, return receipt requested, a notice advising him that unless a new insurance policy or bond is filed prior to the time of such cancellation, expiration or reduction becomes effective, the license of such itinerant merchant shall be revoked at the time such cancellation, expiration or reduction becomes effective. If a new policy or bond is not filed in accordance with such notice the department must revoke said license at said time.

(a) A good and sufficient bond, policy of insurance or other contract in writing in such form and containing such terms and conditions as may be approved by the department under which such indemnitor shall be directly liable for and shall pay all damages for injuries to or

for the death of persons or for damages to or destruction of property for the negligent operation of such motor vehicle in an amount not less than \$10,000 to or for any one person and \$20,000 for one accident, and up to \$10,000 for damage to or destruction of property in any single accident.

(b) A bond in the penal sum of \$500 in such form as may be prescribed by the department, conditioned to pay any taxes, and penalties and interest thereon, due to this state or any governmental subdivision thereof, by reason of the failure of the itinerant merchant trucker to pay any such taxes.

(c) A bond in the penal sum of \$1,000 in such form as may be prescribed by the department, for the purpose of protecting the public against fraud, conditioned upon the delivery of honest weights, measures or grades, if the commodities handled by the itinerant merchant trucker are those customarily sold by weights, measures or grades, accurate representation as to quality or class of such commodities, the actual payment of checks, drafts or other obligations delivered by the itinerant merchant trucker in exchange for the purchase of commodities, and conditioned to pay any judgment that may be obtained against the itinerant merchant trucker for civil liability arising out of the conduct of such business.

(7) PROCEDURE. Any person having a cause of action against the itinerant trucker arising out of the matters described in sub. (6) (a) and (b) may join such itinerant merchant and the surety on his bond in the same action, or may sue such surety without joining such itinerant merchant trucker in the action if the itinerant merchant trucker is deceased or if it is impossible to obtain jurisdiction of his person within the state where the cause of action arose.

(8) DEPARTMENT AGENT TO ACCEPT SERVICE. (a) Before a license shall issue the applicant shall sign and file with the department an irrevocable power of attorney appointing the department his agent to accept service of summons for all causes of action against him arising out of the conduct of his business as an itinerant merchant trucker and the operation of the motor vehicle described in the application.

(b) Service of summons in all causes of action described in this section may be made upon the itinerant merchant trucker and upon the bonding company or insurance company issuing his bonds and insurance policies by sending 3 copies of such summons to the department by registered U. S. mail; the department shall immediately upon receipt thereof

indorse upon each copy the date and hour received and shall file one copy, whereupon service of said summons shall be deemed to be completed upon such itinerant merchant trucker and such bonding company and such insurance company as of the date of such filing. The department shall on the same day send to such itinerant merchant trucker and such bonding or such insurance company the other copies of said summons so received by registered U. S. mail, return receipt requested. The venue of such action may be laid in any county of this state in which said action arose, or in any other place authorized by law.

(9) LICENSES; ISSUED; TRANSFER; REVOCATION. (a) Upon the approval and issuance of the application and upon compliance with the terms of this section, the department shall issue to the applicant a license as an itinerant merchant trucker. Such license shall be numbered, shall specifically describe the itinerant merchant trucker and the motor vehicle as they are described in the application, and shall at all times be carried in the cab of the motor vehicle described and shall at all times be subject to inspection by any person. The department shall also issue to the itinerant merchant trucker a license plate containing the same number as the license, of distinctive color and size, which shall be displayed on the rear of the motor vehicle described in the license.

(b) No license or license plate issued pursuant to this section may be sold or transferred, and no license or license plate may be transferred from one vehicle to another.

(c) Upon such notice and hearing as the department deems proper, it may revoke any license issued under this section for failure to comply with any of the laws of this state, or in case any judgment recovered against any itinerant merchant trucker remains unpaid for a period of 60 days and such judgment is not superseded as bond upon appeal from such judgment.

(10) DEPARTMENT RULES. The department shall make and enforce such rules for the administration of this section as may be necessary and proper.

(11) CUSTODY OF VEHICLES UNLAWFULLY USED. Any motor vehicle operated in violation of this section shall be kept in the custody of any person authorized to enforce any of the laws of this state, and shall not be operated except under his authority and solely for the purpose of taking it to the nearest convenient place of custody, until this section has been complied with.

(12) **POWERS OF LOCAL AUTHORITIES.** Nothing in this section shall be construed to repeal or amend any statute delegating authority to any county or municipal corporation to license, tax or regulate itinerant merchant truckers.

(13) **PENALTY.** Any person violating any provision of this section shall be guilty of a misdemeanor, except as herein otherwise provided, and shall be fined not less than \$100 nor more than \$500 or imprisoned not exceeding 30 days, or both.

(14) **DUTIES OF DISTRICT ATTORNEY AND ATTORNEY GENERAL.** (a) The attorney general, or any district attorney, may commence an action in any court of competent jurisdiction, in the name of the state as plaintiff on the relation of the attorney general or such district attorney, to enjoin any person from violating this section. Such action may be maintained upon due showing that the defendant has violated or is threatening to violate such section.

(b) Upon being presented with the petition of any resident of this state, verified upon oath, stating facts showing that such resident has reasonable grounds to believe that some person has violated or is threatening to violate any of the provisions of this section, it shall be the duty of any district attorney of this state to commence such action for injunction within his county against the person complained of in such petition.

SUBCHAPTER V

PEDDLERS, TRUCKERS, TRANSIENT MERCHANTS, SECONDHAND DEALERS AND SHOWMEN

440.81 Peddler, trucker license. (1) No person shall engage in the business of a trucker, hawker or peddler without having a license for that purpose as provided in this subchapter, but nothing in this subchapter shall prevent any person from distributing or selling any agricultural product which he has grown in this state.

(2) A "trucker" within the meaning of this subchapter is a person who transports produce not grown by himself, in truck or other vehicles, from a point without or within the state, and who sells the same direct from such vehicle to retail merchants without advance order.

(3) Subsections (1) and (2) shall not apply to a person who in the conduct of his business as trucker, hawker or peddler transports at any time a net load of more than 3,000 pounds of personal property by motor truck or other vehicle, nor to a person while lawfully engaged in such business at the state fair or at agricultural fairs held on the grounds and under the direc-

tion of an agricultural society, association or board receiving state aid under s. 93.23 (1), nor to a person while lawfully engaged in such business or lawfully operating any concession on the grounds where a fair, festival or celebration is being held under the direction of a non-profit association.

History: 1971 c. 211 s. 126.

440.82 License fees. (1) Every person desiring to engage in any business mentioned in s. 440.81 must first obtain a license and pay an annual license fee, as follows: Where he uses in such business a vehicle drawn by 2 or more animals, or an automobile or other vehicle propelled by any mechanical power, \$40; where he uses a vehicle drawn by one animal, \$25; where he uses a handcart, \$15; and where he conducts such business on foot carrying his merchandise, \$10.

(2) 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 under s. 49.18 (4), shall upon presenting proof to the department that he satisfies these conditions, be granted a special license without payment of any fee. Such 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 his person his license and the proof required for its issuance, and such blind person shall also carry a picture of himself which is not more than 3 years old. Such special license shall not entitle a blind person to peddle for hire for another person.

440.83 Application; fees. (1) The application for a license as a trucker, hawker or peddler shall be made in writing to the department on blanks to be furnished by the department, wherein the applicant shall specify whether he intends to carry on his business by wagon or other vehicle, or on foot. The applicant shall at or before filing his application, pay the amount prescribed in s. 440.82.

(2) Upon the receipt of an application for license or any license fees under this subchapter, the department shall immediately file the application, and pay such fees into the state treasury in the name of the applicant, and deliver or forward to such applicant his proper license.

440.84 Issue of license; tags. (1) Upon the filing of a license application and the pay-

ment of the fee the department shall issue to the applicant a license for a period of one year, from the date of the issuance thereof which license shall specify what the licensee may do and how he shall operate thereunder, and such license shall not be assignable or transferable, except on written approval of the department.

(2) Any person having a license in one class may, with approval of the department, and on application have his license changed to a higher class by paying the difference between the fee for the license he has and the fee for the higher class applied for, the time of expiration of the license to remain unchanged. A licensee may peddle in any class below the class he has paid for.

(3) The department shall also deliver to each licensee an official number plate, or in the case of a peddler carrying merchandise on foot, an official badge. The official number plates shall be of uniform size and design and contain a distinguishing number to be assigned to the licensee, and the date of expiration of such license followed by the letter "W". The official number plate shall be placed in a conspicuous place on the handcart, wagon, automobile or other vehicle, and be so kept at all times where the same can be readily and distinctly seen. The official badge shall be of uniform size and design, containing the distinguishing number to be assigned to the peddler, and the year covered by the license and the letter "W". The official badge shall be worn in a conspicuous place by the licensee while engaged in doing any act for which the license is required, and shall be displayed at all such times where the same can be readily and distinctly seen.

440.85 Transient merchant defined; fee.

(1) A transient merchant is one who engages in the sale of merchandise at any place in this state temporarily, and who does not intend to become and does not become a permanent merchant of such place. No person shall engage in the business of transient merchant without a license authorizing him to do so. For purposes of this section, sale of merchandise includes a sale in which the personal services rendered upon or in connection with such merchandise constitutes the greatest part of value for the price received, but does not include a farm auction sale conducted by or for a resident farmer of his personal property used on the farm or the sale of produce or other perishable products at retail or wholesale by a resident of this state.

(2) Any person desiring a license as a transient merchant shall, before receiving the same, pay to the department \$75, and he shall, in ad-

dition to such amount, pay to the treasurer of every county where he conducts his business, or of the village or city if such business is conducted in a village or city, \$100 for each day that he may be engaged in carrying on his business, and if any auction sale, liquidation sale or other sale of more than 4 articles of merchandise in one location, is to be conducted he must obtain a license under s. 130.065. But no license shall be required of a transient merchant while lawfully engaged in business at the state fair or at agricultural fairs held on the grounds and under the direction of an agricultural society, association or board receiving state aid under s. 93.23 (1), nor to a person while lawfully engaged in such business or lawfully operating any concession on the grounds where a fair, festival or celebration is being held under the direction of a nonprofit association.

(4) The application for a license as a transient merchant shall be made in writing to the department upon blanks to be furnished by it, and upon the filing of such application and the payment of the license fees, the department shall issue to such applicant a license for a period of one year, commencing on the first day of May, or for such portion of a year as may intervene between the date of the issuance of the receipt and the first day of May next ensuing, the full license fee to be paid in every case, which license shall authorize the person receiving the same to engage in the business of a transient merchant.

History: 1971 c. 211 s. 126.

Cross Reference: See 130.065 for further restrictions on transient merchants.

440.86 License several; penalty. But one person shall carry on business under the terms of any license provided for in this subchapter and no person shall conduct business under the same license as copartners, agents or otherwise. Any person licensed as herein provided, upon the demand of department or any of its deputies, or of any sheriff, constable or police officer shall exhibit his license and make affidavit that he is the person named therein. Any person failing to exhibit his license when so requested shall forfeit not less than \$10 nor more than \$50 for each such offense.

Cross Reference: See 194.175 (1) for provision as to deposit of bail.

440.87 Local license. This subchapter does not in any way limit or interfere with the rights of any town, city or village, or county having a population of less than 500,000, to further license truckers, hawkers, peddlers or transient merchants to trade within the corporate limits

thereof except in the case of ex-soldiers, under s. 440.82. Nothing in this subchapter shall permit the licensing of fuel vendors or those engaged in the delivery of petroleum products or farmers or truck gardeners who sell farm products grown by themselves.

History: 1971 c. 42.

440.88 Revocation of license. Any license issued by the department pursuant to this subchapter may be revoked by the department upon the conviction of the licensee of fraud, offense involving moral turpitude, false representation or imposition in the sale of any merchandise or the sale of any adulterated food, drink or drug, or of any food deleterious to health, and the filing with the department of a certified copy of the judgment of conviction, shall be sufficient authority for the revocation of such license, and any license issued under s. 440.92 may otherwise be revoked for any violation by the licensee or with his consent, express or implied, of the statutes which prohibit gambling or immoral exhibitions.

History: 1971 c. 40 s. 93.

440.89 Penalty for peddling without license. Every person who engages in the business of a trucker, hawker, peddler or transient merchant, without a license, or when licensed as a transient merchant neglects or refuses to pay the per diem fee required by law, or who fails to comply with s. 440.84 (3), shall, for each such offense, forfeit not less than \$25 nor more than \$50.

Cross Reference: See 194.175 (1) for provision as to deposit of bail.

440.90 Village licenses. (1) The supervisors of towns containing villages not incorporated and the trustees of incorporated villages are authorized to establish rates for and license and regulate the traffic of all peddlers endeavoring to procure the sale of any merchandise of whatever description, by putting up booths or stalls or stopping with their conveyances in any street, alley, public square or vacant lot within or near the limits of any of said villages, which shall be designated and determined by said supervisors or trustees, during days of public assemblages held therein, such as county or monthly cattle fairs, election or town meeting days, not to exceed 20 days in any year.

(2) The license or permit provided for in this section shall be good only for the days designated therein, and may be issued by the town or village clerk, under the regulations adopted by such supervisors or trustees.

440.91 Penalty. Whenever the supervisors of any town or the trustees of any village have adopted the system provided for in s. 440.90 any person violating said section or the regulations adopted thereunder, for each such violation shall forfeit not less than \$25 nor more than \$50. This section and s. 440.90 shall in no way affect existing laws regulating agricultural societies.

440.92 Showmen's state licenses. (1) Every owner, manager or agent of a traveling caravan, circus or menagerie, before he is allowed to exhibit the same in this state, shall procure a license as a public showman by making application in writing to the department, which application shall state in detail the manner in which he intends to travel and the nature and character of his exhibition, and shall pay into the treasury an annual license fee of \$100. In addition, every owner or manager of a so-called traveling side show, vaudeville, Ferris wheel, merry-go-round, ocean wave, whip, seaplane, caterpillar, butterfly or similar device, or so-called "rides" operated for amusement, or transient shooting gallery, and except at a regular theater or vaudeville house shall procure a separate license therefor and pay an annual license fee of \$20 for each ride or amusement. Every person exhibiting for money any trained animal, wild animal or any object of curiosity shall procure a state license as a public showman and pay therefor \$20 for an annual license. If any of the aforesaid persons, owner, manager or agent shall state in the application that he applies for the license solely for the purpose of exhibiting at fairs, exhibitions, exhibits or carnivals held on the grounds and under the direction of a society, association or board receiving state aid, the license shall be granted upon the payment of the following fees: For a caravan, circus or menagerie, \$25 annual license fee; for a side show, traveling vaudeville, the exhibit of any trained animal, wild animal, or any object of curiosity, \$10 annual license fee; for any Ferris wheel, merry-go-round, ocean wave, whip, seaplane, caterpillar, butterfly or similar device, or so-called "rides" operated for amusement, or transient shooting gallery, the license shall be granted without charge. No such license shall be issued until the department has ascertained from the department of industry, labor and human relations that the applicant has complied with s. 102.28 (2). This section shall not apply to a concessionaire or lessee of the state on state property where by reason of contract or otherwise the state would be obligated to furnish the license. This subsection shall not apply to persons owning the premises or to persons leasing

premises with permanent installation for periods of one year or more on noncancelable leases in carrying on the aforesaid operations.

(2) No caravan, circus, or menagerie, nor any so-called side show, or traveling vaudeville, nor any animal, wild animal, or object of curiosity exhibited for money shall exhibit or be exhibited at or during the continuance of any fair, exposition, or carnival given by and on the grounds of any society, association, or board drawing aid from the state under the statutes, nor shall any such society, association, or board permit any such exhibit, or give license, permit, or concession for such exhibit unless the department shall have previously granted to such owner, manager, or agent, a permit to make such exhibit at such fair, exposition or carnival.

(3) Upon application of any owner, manager, or agent of any such caravan, circus, menagerie, side show, traveling vaudeville, animal, or object of curiosity exhibited for money, which shall have obtained a license under sub (1), the department after determining that the performance or exhibit is not immoral, indecent, disorderly, degrading, or otherwise objectionable, shall issue a permit to such owner, manager, or agent permitting such exhibit or performance at a stated fair, exposition, or carnival of such society, association or board and at no other time or place.

(4) Any person violating any requirements of this section for each such violation, failure or refusal, such employer, employe or other person, shall forfeit and pay into the state treasury a sum not less than \$20 nor more than \$50.

Cross Reference: See 194.175 (1) for provision as to deposit of bail.

440.93 Selling patent; exhibiting show, etc. Any person who shall sell or offer to sell any patent right or patented articles, goods, wares or merchandise by traveling from place to place for the purpose of such selling, or who shall set up or exhibit any show, spectacle, entertainment or exhibition when a license to do so is required by law, without first obtaining such license, or contrary to the terms and conditions of such license, or while the same is suspended shall be fined not exceeding \$100 nor less than \$20.

Cross Reference: See 194.175 (1) for provision as to deposit of bail.

440.94 Peddling finger alphabet cards prohibited. No person shall in this state engage in the business of peddling finger alphabet cards or printed matter stating that the person is deaf,

or use finger alphabet cards or such printed matter or masquerade as a deaf person in any way as a means of inducement in the sale of merchandise; and no state or local license as provided in this subchapter shall be issued to any person for the purpose of peddling finger alphabet cards or printed matter stating that the person is deaf or masquerading as a deaf person. Any person who peddles finger alphabet cards or such printed matter or uses the same, or masquerades as a deaf person in any way as a means of inducement in the sale of merchandise in this state and any person who issues any state or local license as provided in this subchapter for that purpose may be imprisoned not more than 90 days or fined not less than \$25 nor more than \$100 or both.

Cross Reference: See 194.175 (1) for provision as to deposit of bail.

440.95 Secondhand goods; dealers; regulations. (1) Every dealer or manufacturer of articles composed, in whole or in part, of gold, silver, precious stones, copper, lead or brass, doing business in this state, who obtains, by purchase or exchange, any secondhand firearm, whether smooth bore, shotgun, rifle or handgun or any secondhand article made in whole or in part, of gold, silver, precious stones, copper, lead or brass, shall, within 24 hours after receiving such article, report to the chief of police or the sheriff of the county the fact that the same has been received, with the name, address and description of the person from whom such article was received, together with a description of such article and no such dealer or manufacturer shall destroy or alter the form of any such secondhand article until the expiration of 24 hours from the time the same was received by him.

(2) He shall enter, in ink, in a book to be kept for that purpose a correct description, in the English language, of all secondhand articles composed, in whole or in part, of gold, silver, precious stones, copper, lead or brass so received by him and the name and residence and description of, the person from whom such articles were received, and no entry made in such book shall be erased, obliterated or defaced.

(3) Such book and entries as well as every such secondhand article received by such dealer or manufacturer, shall, at all reasonable times, be open to the inspection of the sheriff or the chief of police or any policeman designated by the chief for such purpose.

(4) Such sheriff or chief of police may cause any article referred to in sub. (1) which he has reason to believe was sold or exchanged by some person other than the owner, to be held

for the purpose of identification by its owner, for such reasonable length of time as he deems necessary.

(5) Any person violating this section may be fined not more than \$100 nor less than \$10, or imprisoned not to exceed 6 months, or both.

Cross Reference: See 194.175 (1) for provision as to deposit of bail.

440.96 Enforcement of subchapter. (1)

The department may, when there is reasonable ground to suppose that license fees or forfeitures which are imposed by ss. 440.81 to 440.96 will become otherwise uncollectible, seize and detain any vehicle or any animals attached thereto, or any handcart, or any of the merchandise conveyed thereby, or any trunk, box or pack, or goods carried by peddlers, until the summons or other process provided by law can be served and the matter is disposed of in court.

The department may serve any writ or process necessary to enforce ss. 440.81 to 440.96, in the same manner and for the same compensation as constables and sheriffs.

(2) (a) The department may, in relation to any matter within the department's power under this section, conduct hearings, administer oaths, issue subpoenas and take testimony.

(b) The witnesses and officers who subpoena them shall be entitled to the fees allowed in courts of record. Such fees shall be audited and paid in the same manner as other expenses of the department are audited and paid. No witness subpoenaed or called at the instance of any party other than the department shall be entitled to payment of fees by the state, unless the department certifies that the testimony of such witness was material.

(c) A record of all hearings shall be kept in the office of the department. All hearings shall be public.