

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Joint Committee for
Review of
Administrative Rules

(JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hr_AC-EdR_RCP_pt01a
- 97hr_AC-EdR_RCP_pt01b
- 97hr_AC-EdR_RCP_pt02

➤ Appointments ... Appt

➤

➤ Clearinghouse Rules ... CRule

➤ 97hr_JCR-AR_CRule_98-124

➤ Committee Hearings ... CH

➤

➤ Committee Reports ... CR

➤

➤ Executive Sessions ... ES

➤

➤ Hearing Records ... HR

➤

➤ Miscellaneous ... Misc

➤

➤ Record of Comm. Proceedings ... RCP

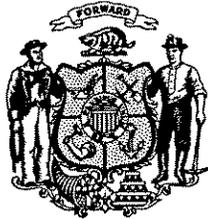
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REL 5.02 CHARITABLE ORGANIZAT.
(98-124)

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-124

AN ORDER to renumber RL 5.02 (2); to renumber and amend RL 5.02 (1); to amend RL 5.01, 5.02 (3) and 5.06 (1) and (2); and to create RL 5.02 (1) and (7) and 5.08 (3m), relating to charitable organizations.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

08-31-98 RECEIVED BY LEGISLATIVE COUNCIL.
09-25-98 REPORT SENT TO AGENCY.

RNS:DD:kjf;jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 98-124

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. In s. RL 5.02 (7), the exception to the definition of "solicit" is arguably inconsistent with pertinent statutes. There is nothing in subch. III of ch. 440, Stats., to suggest that mailing of requests for contributions by a professional fund-raiser or fund-raising counsel should not trigger registration requirements when the contents of the mailing only identify a charitable organization as the person requesting the contributions and do not include the name of the professional fund-raiser or the fund-raising counsel. Note, also, that the department's analysis of the provision only refers to professional fund-raisers; the text of the rule also includes fund-raising counsels.

b. The department should review the authority for the provision in s. RL 5.06 (1) that authorizes the department to deny or limit the registration of a charitable organization which has an officer, director, trustee or executive officer who has been convicted of a felony or a misdemeanor, subject to certain employment discrimination laws. Section 440.42 (1) (b), Stats., requires the department to register a charitable organization that meets all of the stated requirements. Section 440.475, Stats., specifies when the department may deny or limit a registration. Arguably, neither of these provisions authorizes the proposed authority to deny or limit registration based on a felony or a misdemeanor conviction.

2. Form, Style and Placement in Administrative Code

a. In the department's analysis, s. 440.42 (8), Stats., should be listed as a statute authorizing promulgation of the rule. The list of statutes being interpreted appears excessive and lacking in specificity (i.e., pertinent subunits of a listed statute should be referenced).

b. In the treatment clause of SEC. 2, “, as renumbered,” should follow “RL 5.02 (2) (a).” The department should consider merely cross-referencing the statutory definition of “charitable organization,” rather than repeating it in the rule.

c. In s. RL 5.02 (7), “given” should follow “meaning” in the first sentence.

d. The amendment of s. RL 5.06 (2) (title) should be shown by strike-throughs and underscores. [See s. 1.05 (3) (b), Manual.]

e. Section RL 5.08 (3m) can be revised to read: “The \$100,000 contribution limit in s. 440.42 (3) (b), Stats., is raised to \$175,000 if a charitable organization has received during its most recently completed fiscal year one or more contributions from one contributor totaling \$75,000 or more.”

4. Adequacy of References to Related Statutes, Rules and Forms

In s. RL 5.02 (7), the statutory reference should be to s. 440.41 (8), Stats.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 98-)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to **renumber** RL 5.02 (2); to **renumber and amend** RL 5.02 (1); to **amend** RL 5.01, 5.02 (3), 5.06 (1), (2) (title) and (2); and to **create** RL 5.02 (1) and (7), and 5.08 (3m), relating to charitable organizations.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

incomplete ✓ Statutes authorizing promulgation: s. 227.11 (2), Stats.

Statutes interpreted: ss. 440.41, 440.42, 440.43, 440.44, 440.45 and 440.455, Stats.

SECTION 1 cites an additional statutory section as authority for the rules in Chapter RL 5. This citation has been added because SECTION 7 contains an adjustment to the \$100,000 limit which results in the need for a charitable organization to file an audited financial report.

SECTION 2 renumbers a subsection in order to list definitions alphabetically and amends the subsection by removing a couple of unnecessary words.

SECTION 3 creates a definition of "central organization" which does not include other adjectives which the current rules use when referring to this type of organization in reference to group returns which are addressed in the current rules at ss. RL 5.02 (3), 5.06 (2) and 5.08 (4).

SECTION 4 renumbers a subsection.

SECTION 5 parallels changes discussed under SECTION 1 above.

SECTION 6 interprets an aspect of the statutory definition of "solicit." The statutory definition is very broad in its use of the terms "direct" and "indirect" as these terms apply to requests for contributions. Therefore, these proposed rules make a distinction between the mechanical function of preparing and sending another person's mailings and the function of making a mailing under one's own name. This distinction helps the department determine whether a person must register with the department as a professional fund-raiser.

SECTION 7 cites a statute which states the registration fee for charitable organizations. This SECTION removes the specific fee from the rule which would have to be changed every time the statute changes. This SECTION also says that the department may deny or limit the registration of a charitable organization which has an officer, director, trustee or executive officer who has been convicted of a felony or a misdemeanor. Section RL 5.06 (1) currently permits the department to ask a question relating to conviction; however, it does not permit the department to take any action when a conviction is discovered.

SECTION 8 increases from \$100,000 to \$175,000 the contribution limit which requires an audit with the opinion of an independent certified public accountant. This increase only applies to a situation when a charitable organization has received during its recently-completed fiscal year contributions from any number of contributors and the contribution or contributions of one contributor totals \$75,000 or more.

TEXT OF RULE

✓ SECTION 1. RL 5.01 is amended to read:

RL 5.01 AUTHORITY. This chapter is adopted pursuant to ss. 227.11 (2), 440.42 (3) (am), 440.42 (8), and 440.455 (4), Stats.

✓ SECTION 2. RL 5.02 (1) is renumbered RL 5.02 (2) and as renumbered RL 5.02 (2) (a) is amended to read: *why not simply v-5 cf. stat. def. - cf. SEC 6*

RL 5.02 (2) (a) An organization ~~that is~~ described in section 501 (c) (3) of the internal revenue code and that is exempt from taxation under section 501 (a) of the internal revenue code.

✓ SECTION 3. RL 5.02 (1) is created to read:

RL 5.02 (1) "Central organization" means a charitable organization that has one or more affiliated subunits under its general supervision and control, such as a chapter, local, post or unit.

SECTION 4. RL 5.02 (2) is renumbered RL 5.02 (2m).

✓ SECTION 5. RL 5.02 (3) is amended to read:

RL 5.02 (3) "Group return" means a financial report submitted by a central, ~~parent or similar charitable organization for 2 or more charitable organizations which are affiliated with it.~~

SECTION 6. RL 5.02 (7) is created to read:

RL 5.02 (7) "Solicit" has the meaning in s. 440.41, Stats. "Solicit" does not include the mailing of requests for contributions by a professional fund-raiser or a fund-raising counsel when the contents of the mailing only identify a charitable organization as the person requesting the *- given (8)* *and handle* *?*

contributions and do not include the name of the professional fund-raiser or the fund-raising counsel in any of the materials included in the mailing.

SECTION 7. RL 5.06 (1), (2) (title) and (2) are amended to read:

RL 5.06 (1) APPLICATION FOR REGISTRATION. An applicant for registration as a charitable organization shall submit to the department an application on a form prepared by the department, a registration statement that complies with s. 440.42 (2), Stats., and a \$15 registration the fee specified in s. 440.42 (1) (b) 3., Stats. Pursuant to s. 440.42 (2) (m), Stats., the department may require information about a professional fund-raiser or fund-raising counsel whose services the charitable organization uses and information about whether any officers, directors, trustees or executive officers of the charitable organization have been convicted of a felony or a misdemeanor. Subject to ss. 111.321, 111.322 and 111.335, Stats., the department may deny or limit the registration of a charitable organization which has an officer, director, trustee or executive officer who has been convicted of a felony or a misdemeanor.

✓
s. 440.42
s. 440.42
s. 440.42

strike through & underscore >

(2) (title) REGISTRATION OF A CENTRAL ORGANIZATION. A central, ~~parent or similar charitable~~ organization may file a single application for registration of the central, ~~parent or similar charitable~~ organization and all of its affiliated subunits, provided that the central, ~~parent or similar charitable~~ organization has complete and direct control over the solicitation activities of all subunits, receives all contributions for its use or future distribution to the subunits and is accountable for all receipts and disbursements relating to the solicited contributions.

SECTION 8. RL 5.08 (3m) is created to read:

RL 5.08 (3m) EXCEPTION FOR CONTRIBUTION LIMIT REQUIRING AN AUDIT WITH OPINION. The \$100,000 contribution limit in s. 440.42 (3) (b), Stats., is raised to \$175,000 in those situations when a charitable organization has received during its recently completed fiscal year contributions from any number of contributors and the contribution or contributions of one contributor totals \$75,000 or more.

✓
s. 440.42
s. 440.42

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Marlene A. Cummings, Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

-- These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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8/27/98