

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10/19/99

BILL NO. SB 224

SUBJECT adverse remarks

concern

Star Swift

(NAME)

3424 N. Hackett Ave

(Street Address or Route Number)

Madison WI 53211-2945

(City and Zip Code)

(Representing) Self

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger **PROMPTLY**.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: October 19, 1999

BILL NO. Senate Bill 224

SUBJECT _____

Don Rittel, Legal Counsel

(NAME)

1400 E. Washington Ave

(Street Address or Route Number)

MADISON 53703

(City and Zip Code)

(Representing) Secretary Markle Cummings, Dept of Natural Resources

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger **PROMPTLY**.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

History of Senate Bill 224

SENATE BILL 224

An Act to amend 480.20 (2); and to create 480.06 (6) of the statutes; relating to: advertisements of auctions conducted by registered Wisconsin auctioneers and granting rule-making authority.
1999

- 08-26. S. Introduced by committee on LABOR, by request of Marlene A. Cummings, Secretary, Department of Regulation and Licensing.
- 08-26. S. Read first time and referred to committee on Labor 245
- 10-19. S. Public hearing held.

Text of Senate Bill 224

Search for another history



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Vote Record

Senate Committee on Labor

Date: 8-19-99
Moved by: X Zien Seconded by: Breske
AB: _____ Clearinghouse Rule: _____
AB: _____ SB: _____ Appointment: _____
AJR: _____ SJR: _____ Other: LRB 2632
A: _____ SR: _____ auctioneers

A/S Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____
A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

Sen. Jim Baumgart, Chair
Sen. Russell Decker
Sen. Roger Breske
Sen. David Zien
Sen. Margaret Farrow

<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: _____

Motion Carried

Motion Failed

Vote Record

Senate Committee on Labor

Date: 10-19-99
Moved by: Decker Seconded by: Baumgart
AB: _____ Clearinghouse Rule: _____
AB: _____ SB: 224 Appointment: _____
AJR: _____ SJR: _____ Other: _____
A: _____ SR: _____

A/S Amdt: _____ to A/S Amdt: _____
A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrence |
| | <input type="checkbox"/> Confirmation |

Committee Member

Sen. Jim Baumgart, Chair
Sen. Russell Decker
Sen. Roger Breske
Sen. David Zien
Sen. Margaret Farrow

<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input checked="" type="checkbox"/> "	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 5 0 0 0

Motion Carried

Motion Failed



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Sen. Baumgart

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P. O. BOX 8935
MADISON, WISCONSIN 53708-8935
E-Mail: dorl@mail.state.wi.us
(608) 266-2112
FAX#: (608) 267-0644

Date: June, 1999
To: All Interested Parties
From: Secretary Marlene A. Cummings
Wisconsin Auctioneer Board
Subject: LRB 2282/1(Assembly) & LRB 2632/1(Senate)-relating to advertisements of auctions conducted by registered Wisconsin auctioneers and granting rule-making authority.

LRB 2282/1-LRB 2632/1

- ❖ **Allows the Department of Regulation and Licensing to promulgate rules that would allow an auctioneer to abbreviate “registered Wisconsin auctioneer” for purposes of the statement.**

Rationale For Statute Change: The Department and the Auctioneer Board have reviewed the related statutes and administrative rules that impose advertising requirements and the Department and Board have concluded that some of the requirements are not needed to adequately protect consumers.

Furthermore, advertising costs are mostly based on line inches and the Department commenced rulemaking to eliminate unnecessary requirements.

The Department and Board would also like to permit auctioneers to abbreviate “registered Wisconsin auctioneer”. Since placing this term in an advertisement is a statutory requirement, the Department needs authority to permit the abbreviation and requests rulemaking authority to specify what abbreviation is acceptable and to require that the abbreviation be followed by the registration number.

*Please see attached chart, thank you.

/mls

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors; Professional Geologists, Hydrologists and Soil Scientists; Auctioneer; Barbering and Cosmetology; Chiropractic; Controlled Substances; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Podiatry; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

**A PROPOSAL TO AMEND THE REQUIREMENTS THAT APPLY TO ADVERTISEMENTS OF AUCTIONS
 CONDUCTED BY REGISTERED WISCONSIN AUCTIONEERS AND GRANTING RULE-MAKING AUTHORITY
 (1999 Assembly LRB-2282/1 and 1999 Senate LRB-2632/1)**

CURRENT LAW	PROPOSED CHANGE	REASON FOR CHANGE
<p>A registered auctioneer may not advertise an auction that is to be conducted by the auctioneer, unless the advertisement includes a statement that the auctioneer is a "registered Wisconsin auctioneer."</p>	<p>This bill allows the department to promulgate rules that allow an auctioneer to abbreviate "registered Wisconsin auctioneer" for purposes of this statement.</p>	<p>The department and the Auctioneer Board have reviewed this statute and related administrative rules that impose advertising requirements and the department and the board have concluded that some of the requirements are not needed to adequately protect consumers. Furthermore, advertising costs are mostly based on line inches and these costs can become expensive. Therefore, the department commenced rulemaking to eliminate unnecessary requirements. The department and the board would also like to permit auctioneers to abbreviate "registered Wisconsin auctioneer." Since placing this term in an advertisement is a statutory requirement, the department needs authority to permit the abbreviation and the department requests rulemaking authority to specify what abbreviation is acceptable and to, possibly, require that the abbreviation be followed by the registration number.</p>

August 17, 1999

TO: Members of the Senate Labor Committee

Senator Russell Decker
Senator Roger Breske

Senator David Zien
Senator Margaret Farrow

FROM: Senator Jim Baumgart, Chair

RE: Exec. Session – August 19, 1999 on LRB 2632

.....
For your information, I attach written testimony on the above LRB from Marlene A. Cummings, Secretary, Department of Regulation & Licensing.

REMEMBER: The Executive Session will start at 9:00 AM Sharp.

Senate Committee on Labor

Lamm

Executive Session - Tuesday, October 19, 1999

Senate Bill 150

Relating to: the eligibility of certain employes of 1st class cities to take general promotional examinations. By Senators George and Burke; cosponsored by Representatives La Fave, Powers, Young, Riley, Turner and Ryba.

Motion by Senator Decker, seconded by Senator Baumgart that SB 150 be recommended for passage.

Baumgart AYE, Decker AYE, Breske (hold vote open), Zien (hold vote open)
FARROW aye

Senate Bill 223

Relating to: the provision of specialized disaster relief services by represented state employes. By Senators Erpenbach, Roessler, Plache and Grobschmidt; cosponsored by Representatives Schneider, Ryba, Musser, Miller, Powers and Hasenohrl.

Motion by Senator Baumgart, seconded by Senator Decker, that Senate Amendment, for introduction and adoption of LRBa0765/1. This is a wording amendment (see attached copy).

Baumgart AYE, Decker AYE, Breske (hold vote open), Zien (hold vote open)
FARROW Aye

Motion by Senator Decker, seconded by Senator Baumgart, that SB 223 be recommended for passage, as amended.

Baumgart AYE, Decker AYE, Breske (hold vote open), Zien (hold vote open)
FARROW NO

Senate Bill 224

Relating to: advertisements of auctions conducted by registered Wisconsin auctioneers and granting rule-making authority. By the Committee on Labor, by request of the Marlene A. Cummings, Secretary, Department of Regulation and Licensing.

Motion by Senator Decker, seconded by Senator Baumgart, that SB 224 be recommended for passage.

Baumgart AYE, Decker AYE, Breske (hold vote open), Zien (hold vote open)
FARROW aye _____

SENATE LABOR COMMITTEE - EXECUTIVE SESSION - Thursday, ^{August} ~~April~~ 19, 1999, 9:00 AM

PAPER BALLOT FOR SENATOR MARGARET FARROW

Senate Bill 163 (Law Revision Committee) re changing certain terminology in laws affecting the state civil service system (suggested as remedial legislation by the department of employment relations.

Introduction & Adoption of Senate Amendment LRBa0540/1. (Will be Committee Amendment)

Moved by Senator _____, seconded by Senator _____, that Senate Amendment LRBa0540/1 be recommended for introduction and adoption.

Senator Farrow AYE

Moved by Senator _____, seconded by Senator _____, that Senate Bill 163 be recommended for passage as amended.

Senator Farrow _____

Senate Bill 145 (Senator Roessler) re to the employment of minors 12 years or older as officials for athletic events in which the participants are under 14 years of age.

Introduction and Adoption of Senate Substitute Amendment LRBs0103/1. (Will be committee amendment)

Moved by Senator _____, seconded by Senator _____, that Senate Substitute Amendment LRBs0103/1 be recommended for introduction and adoption.

Senator Farrow NAY

Moved by Senator NAY, seconded by Senator _____, that Senate Bill 145 be recommended for passage as amended.

Senator Farrow _____

SB 224 LRB 2632/1 (Senate) re to advertisements of auctions conducted by registered WI auctioneers & granting rule-making authority. Enclosed is a of this LRB & a copy of a letter of explanation from Marlene A. Cummings, Sec., Department of Regulation & Licensing.

Motion will be for introduction of the LRB as a committee bill at the request of Secretary Cummings.

Moved by Senator _____, seconded by Senator _____, that LRB 2632/1 be recommended for introduction.

Senator Farrow AYE

August 3, 1999

Anne

M E M O

TO: MEMBERS OF SENATE LABOR COMMITTEE

Senator Russell Decker Senator David Zien
Senator Roger Breske Senator Margaret Farrow

FROM: Senator Jim Baumgart, Chair

RE: **AGENDA FOR COMMITTEE HEARING & EXECUTIVE SESSION -
August 19, 1999 - Room 201 SE - State
Capitol**

.....

Public Hearing - A Public Hearing on SB 193* will be scheduled for 9:30 AM. As it may take a while, it is my plan to hold an executive session **before the Public Hearing** in order to have as many committee members present as possible.

***Senate Bill 193** (Chvala) re a state minimum wage, providing an exemption from emergency rule procedures, providing an exemption from rule-making procedures, granting rule-making authority and providing a penalty.

Executive Session (9:00 AM) - The committee will take up the following bills:

Senate Bill 163 (Law Revision Committee) re changing certain terminology in laws affecting the state civil service system (suggested as remedial legislation by the department of employment relations.

Public Hearing was held on June 23, 1999 - Needed amendment to change wording from "handicapped" to "disabled". Amendment ready for introduction & adoption. Enclosed is copy of Amendment.

Senate Bill 145 (Senator Roessler) re to the employment of minors 12 years or older as officials for athletic events in which the participants are under 14 years of age.

Public Hearing held on May 26, 1999. Enclosed is memo from Dan Fernbach, Leg.Council Attorney, re the bill and a copy of a substitute amendment to the bill to be taken up by committee. If you have any questions re the amendment, please contact Dan Fernbach as he worked on the amendment with Senator Roessler

SB 224 LRB 2632/1 (Senate) re to advertisements of auctions conducted by registered WI auctioneers & granting rule-making authority. Enclosed is a copy of this LRB & a copy of a letter of explanation from Marlene A. Cummings, Sec., Department of Regulation & Licensing. The motion at the executive session would be only for introduction of the LRB as a committee bill at the request of Secretary Cummings. This LRB does not deal with or change any items relating to CR 98-135 that was reported out of the committee in April with modifications. Any questions, contact Dan Fernbach.



Tommy G. Thompson
Governor

State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

SB 224

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P. O. BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

EXECUTIVE SESSION-FOR INTRODUCTION

**Testimony Of
Secretary Marlene A. Cummings
Department of Regulation and Licensing
On LRB 2632**

**Before the Committee on Labor
August 19, 1999**

Good morning, Chairperson Baumgart and members of the committee.

I am submitting written testimony to inform you that the Department of Regulation and Licensing and the Auctioneer Board requested the introduction of LRB 2632 that we both support.

As you can see, LRB 2632 is a very simple proposal that would permit the Department of Regulation and Licensing to promulgate rules to permit Wisconsin auctioneers to abbreviate the statutory phrase "registered Wisconsin auctioneer." Since the phrase in the current statutes is in quotations, the Department and others have concluded that the Department does not have the authority to promulgate rules that would permit auctioneers to use an acceptable abbreviation. In fact, when the Department sent proposed revisions of the advertising rules to the Rules Clearinghouse last year, the Clearinghouse reviewer questioned a provision that would have permitted the use of one or other abbreviation.

The Department of Regulation and Licensing reviewed the auctioneer advertising requirements during the past year and repealed or amended provisions that are not needed for adequate consumer protection and that were unduly costly for auctioneers. For example, requirements relating to the auctioneer's address and telephone number were repealed. The Auctioneer Board agreed that some of the requirements that it had recommended in 1995 were no longer necessary. Registered auctioneers were also voicing the same opinion and objected to the cost of unnecessary lines of advertising. They were also frequently abbreviating "registered Wisconsin auctioneer." The Department and the Board would not object to the use of an abbreviation, as long as the public can understand what it means.

We ask for your support of LRB 2632. Thank you for this opportunity to address you.

Regulatory Boards

Accounting; Architects; Landscape Architects; Professional Geologists; Professional Engineers; Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

Committed to Equal Opportunity in Employment and Licensing



Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

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**Testimony of the
Department of Regulation and Licensing/
Wisconsin Auctioneer Board
on Senate Bill 224
Before the
Senate Committee on Labor
October 19, 1999**

Good morning, Chairperson Baumgart and members of the committee. My name is Don Rittel, Legal Counsel, at the Department of Regulation and Licensing. I am here today testifying on behalf of Secretary Marlene Cummings and the Wisconsin Auctioneer Board. The Secretary and Board would like to extend their thanks to the committee for introducing this legislation by request of the Secretary.

Senate Bill 224 would permit the Department of Regulation and Licensing to promulgate rules to permit Wisconsin auctioneers to abbreviate the statutory phrase "registered Wisconsin auctioneer." Since the phrase in the current statutes is in quotations, the Department and others have concluded that the Department does not have the authority to promulgate rules that would permit auctioneers to use an acceptable abbreviation. In fact, when the Department sent proposed revisions of the advertising rules to the Rules Clearinghouse last year, the Clearinghouse reviewer questioned a provision that would have permitted the use of one or other abbreviation.

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Again, thank you for all your consideration and support on SB 224.

SB 224-Auctioneers/mls

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors; Professional Geologists, Hydrologists and Soil Scientists; Auctioneer; Barbering and Cosmetology; Chiropractic; Controlled Substances; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Podiatry; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

Committed to Equal Opportunity in Employment and Licensing

1140

WISCONSIN STATUTES
RELATING TO THE PRACTICE OF
AUCTIONEERS AND AUCTION COMPANIES

**Statutes,
Administrative Rules,
General Information**

APRIL 1997



Department of Regulation and Licensing
1400 E. Washington Avenue
P.O. Box 8935
Madison WI 53708-8935

INTRODUCTION

This booklet contains the "License Law" relating to the regulation of auctioneers and auction companies in Wisconsin. It contains selected sections from the Wisconsin Statutes and all the administrative rules of the Department of Regulation and Licensing and the Auctioneer Board. It also includes selected statutes and rules, as well as the address and telephone number of other state agencies which regulate certain types of auctions. In summary, this booklet contains all of the material which is covered in the auctioneer examination.

The regulation of auctioneers and auction companies was published as 1993 Wisconsin Act 102 on December 27, 1993, and the Act became effective on December 28, 1993. However, the new statewide regulation of auctioneers and auction companies was delayed until March 1, 1995. A new 7-member Auctioneer Board was appointed and the Board began meeting as an official body after the Wisconsin Senate confirmed the Governor's appointment of the members.

The Auctioneer Board and the Department of Regulation and Licensing share authority and responsibility for regulating auctioneers and auction companies. The Auctioneer Board is composed of 4 members of the profession and three public members. The Board has authority to close investigative files and take disciplinary action against registrants who are unethical or incompetent. It is advisory to the Department in other regulatory matters.

The Department of Regulation and Licensing is an umbrella agency which directly regulates some occupations and professions and which provides administrative services to various professional boards. Within the Department, the Bureau of Direct Licensing and Real Estate, provides administrative services to the Auctioneer Board.

Questions about the business of the Board may be directed to the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 E. Washington Avenue, P.O. Box 8935, Madison, WI 53708-8935.

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**CHAPTER 480
AUCTIONEER BOARD**

480.01	Definitions.	480.16	Trust accounts.
480.02	Applicability.	480.18	Maintenance of records by auctioneers.
480.04	General duties and powers of board.	480.20	Advertisements of auctions.
480.06	Rules; review of rules.	480.22	Auction consumer protection fund.
480.08	Registration.	480.24	Disciplinary proceedings and actions.
480.10	Auctioneer examination.	480.26	Penalties.
480.12	Reciprocity.		
480.14	Conduct of auctions.		

Cross-reference: See definitions in s. 440.01.

480.01 Definitions. In this chapter:

(1) "Auction" means a sale transaction conducted by means of oral or written exchanges between an auctioneer and prospective purchasers of goods or real estate that consist of a series of invitations made by the auctioneer to the prospective purchasers for offers for the purchase of goods or real estate and that culminate in the acceptance by the auctioneer of the highest or most favorable offer made by one of the prospective purchasers.

(2) "Auction company" means a person who manages an auction or who has primary responsibility for handling sales proceeds, downpayments, earnest money deposits or other trust funds received by an auctioneer, the person's principal or any other person at or as a result of an auction.

(3) "Auction company representative" means:

(a) If the auction company is an individual, that individual.

(b) If the auction company is a partnership, association or corporation, any partner of the partnership, officer or director of the association or officer or director of the corporation.

(4) "Auctioneer" means an individual who engages in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for and the recognition and acceptance of offers for the purchase of goods or real estate at an auction.

(5) "Board" means the auctioneer board.

(6) "Registrant" means a person who is registered under this chapter.

History: 1993 a. 102.

480.02 Applicability. (1) This chapter applies after February 28, 1995. (2) This chapter does not apply to any of the following: (a) An auction conducted by or under the direction of an official of the United States or of this state or a county, city, village or town in this state.

(b) An auction required by a court order or judgment.

(c) A sale of goods or real estate required by law to be a sale by auction.

(d) An auction conducted by the owner of the goods or real estate for sale if the owner has held the goods or real estate for his or her personal use for at least one year immediately preceding the date of the auction.

(e) An auction conducted by or under the direction of a religious, fraternal or benevolent society, a school or a nonprofit organization.

(f) An auction conducted by or under the direction of a political organization or candidate if the proceeds of the auction will be used for political purposes.

(g) An auction in which the total appraised value of the goods or services for sale is less than \$500.

(h) Fur auctions and fur auctioneers licensed by the department of natural resources under ch. 29.

(i) Motor vehicle auction dealers licensed by the department of transportation under subch. VIII of ch. 218.

(j) A person, other than a licensee as defined in s. 452.01 (5), who conducts an auction, or manages or has primary responsibility for handling sales proceeds, downpayments, earnest money deposits or other trust funds received at or as a result of an auction, while lawfully

practicing within the scope of a license, permit or certificate granted to that person by a state governmental agency other than the department.

History: 1993 a. 102.

480.04 General duties and powers of board. (1) In addition to the other duties and powers of the board under this chapter, the board shall advise the secretary on matters relating to auctioneers or auction companies or to the board.

(2) The board does not have rule-making authority.

History: 1993 a. 102. 480.06 Rules; review of rules.

(1) Before submitting any proposed rules relating to auctioneers or auction companies or to the board to the legislative council staff under s. 227.15, the department shall submit the proposed rules to the board for comment. The board shall have 30 days to submit comments on the proposed rules to the secretary.

(2) When promulgating emergency rules under s. 227.24, the department shall provide a copy of the rules to the board prior to publication of the rules in the official state newspaper.

(3) The chairperson of the board, or his or her designee from the board, may cochair with the secretary, or the secretary's designee, any public hearing held by the department on proposed rules relating to auctioneers or auction companies or to the board.

(4) The department shall submit to the board a copy of the report required under s. 227.19 (2) on any proposed final rules relating to auctioneers or auction companies or to the board. The board may prepare a dissenting report stating its recommendations on the proposed final rules. Any dissenting report shall be prepared within 10 days from the date of receipt of the department's report, attached to the department's report and sent to the presiding officer of each house of the legislature and distributed under s. 227.19 (2). The department shall publish a statement to appear in the Wisconsin administrative register indicating that a dissenting report of the board has been submitted to the presiding officer of each house of the legislature.

(5) The department shall provide staff to assist the board in the review of administrative rules and preparation of comments or dissenting reports.

History: 1993 a. 102.

480.08 Registration. (1) Registration required. (a) No person may act as an auctioneer or use the title "auctioneer", "registered auctioneer", "certified auctioneer", "licensed auctioneer" or any similar title unless the person is registered as an auctioneer under this chapter.

(b) No person may act as an auction company unless the person is registered as an auction company or as an auctioneer under this chapter.

(2) Auctioneer registration. The department shall register as an auctioneer an individual who is at least 18 years old and does all of the following:

(a) Submits an application for registration as an auctioneer to the department on a form provided by the department.

(b) Pays the fee specified in s. 440.05 (1).

(c) Subject to ss. 111.321, 111.322 and 111.335, submits evidence satisfactory to the department that he or she does not have an arrest or conviction record.

(d) Submits evidence satisfactory to the department that he or she holds a current permit issued under s. 77.52 (9).

(e) Passes an examination conducted by the department to determine fitness as an auctioneer.

(2m) Examination not required. Notwithstanding sub. (2) (c), the department shall register as an auctioneer under sub. (2) an individual who, not later than December 1, 1997, satisfies the requirements under sub. (2) (intro.) and (a) to (d); submits to the department a statement, signed by the individual, verifying that he or she has knowledge of the requirements for auctioneers under ss. 29.134, 402.328 and 406.108, subch. III of ch. 77, subch. VIII of ch. 218, this chapter, and all other state laws that include requirements for auctioneers; and submits evidence satisfactory to the department that he or she has done any of the following:

(a) Been practicing as an auctioneer in this state for at least one year during the 2-year period immediately preceding the date on which the application is submitted, and has either conducted at least 2 auctions in this state or has had primary responsibility for handling the proceeds of at least 2 auctions in this state during the 2-year period immediately preceding the date on which the application is submitted.

(b) Had experience conducting auctions in this state or handling the proceeds of auctions in this state during the 5-year period immediately preceding the date on which the application is submitted that is substantially equivalent to the experience described in par. (a) in preparing the applicant to practice as an auctioneer in this state in a manner that does not adversely affect the public health, safety or welfare.

(3) Auction company registration. The department shall register as an auction company a person who is not registered as an auctioneer under this chapter and does all of the following:

(a) Submits an application for registration as an auction company to the department on a form provided by the department.

(b) Pays the fee specified in s. 440.05 (1).

(c) Subject to ss. 111.321, 111.322 and 111.335, submits evidence satisfactory to the department that the person does not have an arrest or conviction record and, if the person is a partnership, association or corporation, that no partner of the partnership, officer or director of the association or officer or director of the corporation has an arrest or conviction record.

(d) Submits evidence satisfactory to the department that the person holds a current permit issued under s. 77.52 (9).

(4) Issuance of certificate. The department shall issue a certificate of registration to each registrant.

(5) Expiration and renewal. The renewal date and renewal fee for certificates granted under this chapter, other than temporary certificates granted under sub. (7), are specified under s. 440.08 (2) (a). Renewal applications shall include evidence satisfactory to the department that the applicant holds a current permit issued under s. 77.52 (9). A renewal application for an auctioneer certificate shall be accompanied by proof of completion of continuing education requirements under sub. (6).

(6) Auctioneer continuing education. The department may promulgate rules establishing requirements and procedures for registered auctioneers to complete continuing education programs or courses of study in order to qualify for renewal.

(7) Temporary auctioneer certificate.

(a) Upon application, the department shall register as an auctioneer and issue a temporary certificate of registration to an individual who satisfies the requirements under sub. (2) (intro.) and (a) to (d) and has submitted an application to take the next available examination for registration as an auctioneer under s. 480.10.

(b) A temporary certificate issued under this subsection shall be valid for a period designated by the department, not to exceed one year, and may not be renewed. An applicant for a temporary certificate shall pay the fee specified in s. 440.05 (6).

History: 1993 a. 102; 1995 a. 225.

480.10 Auctioneer examination. (1) The department shall conduct examinations for auctioneer registration at least semiannually at times and places determined by the department. The department shall provide public notice of each examination at least 60 days before the date of the examination.

(2) Examinations shall consist of written or oral tests, or both, requiring applicants to demonstrate minimum competency in services and subjects substantially related to conducting an auction.

(3) An individual is not eligible for examination unless the individual has satisfied the requirements for registration under s. 480.08 (2) (intro.) and (a) to (d) at least 30 days before the date of the examination.

(4) The department shall promulgate rules establishing standards for public notice of examinations and for acceptable examination performance by an applicant for registration as an auctioneer.

History: 1993 a. 102.

480.12 Reciprocity. (1) Upon application and payment of the fee specified in s. 440.05 (2), the department shall register as an auctioneer an individual who holds an auctioneer certificate in another state if the department determines that the requirements for obtaining the certificate in the other state are substantially equivalent to the requirements under s. 480.08 (2).

(2) The department may enter into reciprocal agreements with officials of other states for registering auctioneers and issue certificates to applicants who are registered in those states according to the terms of the reciprocal agreements.

History: 1993 a. 102.

480.14 Conduct of auctions. (1) No auctioneer may conduct an auction unless the auctioneer or the auction company that is managing the auction has entered into a written contract with each owner or consignor of goods or real estate that may be sold at the auction. The contract shall specify the terms and conditions upon which the auctioneer or auction company accepts the goods or real estate for sale.

(2) An auctioneer shall comply with all reasonable requests of each owner or consignor of goods or real estate that may be sold at an auction that is conducted by the auctioneer and shall conduct the auction in a manner that ensures that the highest or most favorable offer for the goods or real estate is accepted.

(3) Unless otherwise provided by the terms of a contract described under sub. (1), within 30 days after the sale of goods or real estate at an auction, the auctioneer who conducts the auction shall do all of the following:

(a) Provide to each owner or consignor of goods or real estate that was sold or attempted to be sold at the auction an accounting of all moneys due the owner or consignor.

(b) Pay to each owner or consignor of goods or real estate that was sold at the auction all moneys due the owner or consignor.

(4) An auctioneer shall comply with all requirements for auctioneers under ss. 402.328 and 406.108 and the rules promulgated under ss. 402.328 and 406.108.

History: 1993 a. 102.

480.16 Trust accounts. All downpayments, earnest money deposits or other trust funds received by an auctioneer or auction company on behalf of the auctioneer's or auction company's principal or any other person shall be deposited in a common trust account maintained by the auctioneer or auction company for that purpose in a bank, savings and loan association or credit union which is authorized to do business in this state and is designated by the auctioneer or

auction company pending the consummation or termination of the transaction, except that the money may be paid to one of the parties pursuant to an agreement between the parties. The name of the bank, savings and loan association or credit union shall at all times be registered with the department, along with a letter authorizing the department to examine and audit the trust account when the department determines that an examination or audit of the trust account is necessary.

History: 1993 a. 102.

480.18 Maintenance of records by auctioneers. (1) Unless a longer period of retention is required under sub. (2), for at least 2 years after an auctioneer conducts an auction, the auctioneer shall maintain complete and accurate records of the auction, including the name and address of each owner or consignor of goods or real estate that was sold or attempted to be sold at the auction, a description of the goods or real estate that was sold or attempted to be sold at the auction, the originals or true copies of the contracts described in s. 480.14 (1) and accounts of all moneys received and disbursed at or as a result of the auction.

(2) An auctioneer shall retain the records described in sub. (1) for at least 2 years after the termination of any litigation related to any goods or real estate that was sold or attempted to be sold at an auction conducted by the auctioneer.

(3) An auctioneer shall, upon reasonable notice, make the records described in sub. (1) available for inspection and copying by the department or the board.

History: 1993 a. 102.480.20 Advertisements of auctions. No person may advertise that an auction will be conducted unless the advertisement includes all of the following:

(1) The name of the auctioneer who will conduct the auction and the name of any auction company that is managing the auction.

(2) A statement that the auctioneer under sub. (1) is a "registered Wisconsin auctioneer".

History: 1993 a. 102.

480.22 Auction consumer protection fund. (1) In this section, "consumer" means a person who has purchased or intends to purchase goods or real estate at an auction.

(2) If the department determines that the establishment of a consumer protection fund is necessary to protect consumers and reimburse consumers who claim losses resulting from the illegal, unprofessional or unethical conduct of auctioneers or auction companies, the department shall prepare a report that includes relevant data related to consumers and a recommendation to establish a consumer protection fund that is similar to the cemetery consumer protection fund described in s. 440.92 (8), 1991 stats., and shall submit the report to the legislature under s. 13.172 (2).

History: 1993 a. 102, 491.

480.24 Disciplinary proceedings and actions. (1) Subject to the rules promulgated under s. 440.03 (1), the board may make investigations or conduct hearings to determine whether a violation of this chapter or any rule promulgated under this chapter has occurred. The board may require a registrant or an auction company representative of an auction company that is a registrant to undergo and may consider the results of one or more physical, mental or professional competency examinations if the board believes that the results of any of those examinations may be useful to the board in conducting its investigation.

(2) Subject to the rules promulgated under s. 440.03 (1), the board may reprimand a registrant or deny, limit, suspend or revoke a certificate under this chapter if it finds that the applicant or registrant or an auction company representative of an auction company that is an applicant or registrant has done any of the following:

(a) Made a material misstatement in an application for a certificate or renewal of a certificate.

(b) Engaged in conduct while practicing as an auctioneer or as an auction company which evidences a lack

of knowledge or ability to apply professional principles or skills.

(c) Subject to ss. 111.321, 111.322 and 111.335, been arrested or convicted of an offense committed while registered under this chapter.

(d) Advertised in a manner which is false, deceptive or misleading.

(e) Advertised, practiced or attempted to practice as an auctioneer or as an auction company under another person's name.

(f) Allowed the registrant's name to be used by another person while the other person was practicing or attempting to practice as an auctioneer or as an auction company.

(g) Subject to ss. 111.321, 111.322 and 111.34, practiced as an auctioneer or as an auction company while the individual's ability to practice was impaired by alcohol or other drugs.

(h) Failed to obtain a permit under s. 77.52 (9).

(i) Failed to submit to a physical, mental or professional competency examination required under sub. (1) or (3) (a).

(j) Violated this chapter or any rule promulgated under this chapter.

(3) The board may, as a condition of removing a limitation on a certificate issued under this chapter or of reinstating a certificate that has been suspended or revoked under this chapter, do any of the following:

(a) Require the registrant or an auction company representative of an auction company that is a registrant to obtain minimum results specified by the board on one or more physical, mental or professional competency examinations if the board determines that obtaining the minimum results is related to correcting one or more of the bases upon which the limitation, suspension or revocation was imposed.

(b) Require the registrant to obtain insurance against loss, expense and liability resulting from errors and omissions or neglect in the performance of services as an auctioneer or as an auction company.

(c) Require the registrant to file with the department a bond that is furnished by a company authorized to do business in this state and is in an amount approved by the department.

History: 1993 a. 102; 1995 a. 27.

480.26 Penalties. (1) Any person who violates this chapter or any rule promulgated under this chapter may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(2) In addition to or in lieu of the penalties under sub. (1) and the remedies under s. 480.24, any person who violates this chapter or any rule promulgated under this chapter may be required to forfeit not more than \$1,000 for each separate offense. Each day of continued violation constitutes a separate offense.

History: 1993 a. 102.

CHAPTER 15
STRUCTURE OF THE EXECUTIVE BRANCH

SUBCHAPTER I
GENERAL PROVISIONS

15.07 Boards.

SUBCHAPTER I
GENERAL PROVISIONS

15.07 Boards. (1) Selection of members.

(a) If a department or independent agency is under the direction and supervision of a board, the members of the board, other than the members serving on the board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve for terms prescribed by law, except:

2. Members of the elections board shall be appointed as provided in s. 15.61.
3. Members of the employe trust funds board appointed or elected under s. 15.16 (1) (a), (b) and (d) shall be appointed or elected as provided in that section.
4. Members of the investment board appointed under s. 15.76 (3) shall be appointed as provided in that section.
5. The members of the educational communications board appointed under s. 15.57 (5) and (7) shall be appointed as provided in that section.
6. Members of the University of Wisconsin Hospitals and Clinics Board appointed under s. 15.96 (8) shall be appointed by the governor without senate confirmation.

(b) For each board not covered under par. (a), the governor shall appoint the members of the board, other than the members serving on the board because of holding another office or position and except as otherwise provided, for terms prescribed by law except that all members of the following boards, or all members of the following boards specified in this paragraph, other than the members serving on a board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, for terms provided by law:

1. Banking review board.
2. Consumer credit review board.
3. Credit union review board.
5. Savings and loan review board.
8. Real estate board.
9. Board on aging and long-term care.
10. Land and water conservation board.
11. Waste facility siting board.
12. Prison industries board.
14. Deferred compensation board.
15. The 3 members of the lower Wisconsin state riverway board appointed under s. 15.445 (3) (b) 7.
- 15m. State fair park board.
16. Land information board.
17. Real estate appraisers board.
18. Savings bank review board.
19. The recycling market development board.
- 19m. Auctioneer board.
20. The 3 members of the Kickapoo reserve management board appointed under s. 15.445 (2) (b) 3.

(c) Except as provided under par. (cm), fixed terms of members of boards shall expire on May 1 and, if the term is for an even number of years, shall expire in an odd-numbered year.

(cm) The term of one member of the ethics board shall expire on each May 1. The terms of 3 members of the development finance board appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every even-numbered year and the terms of the other 3 members appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every odd-numbered year.

The terms of the 3 members of the land and water conservation board appointed under s. 15.135 (4) (b) 2. shall expire on January 1. The term of the member of the land and water conservation board appointed under s. 15.135 (4) (b) 2m. shall expire on May 1 of an even-numbered year. The terms of members of the real estate board shall expire on July 1. The terms of the appraiser members of the real estate company representative members of the auctioneer and auction company representative members of the auctioneer board shall expire on May 1 in an even-numbered year. The terms of the 4 members of the educational technology board appointed under s. 15.105 (26) (a) 1., 3., 6. and 9. shall expire on May 1 in an even-numbered year. The terms of the members of the public intervenor board shall expire as provided in s. 15.345 (4) (b). The terms of 3 members of the gaming board appointed under s. 15.64 shall expire on July 1 of an even-numbered year and the terms of the other 2 members shall expire on July 1 of an odd-numbered year. The terms of 4 of the members of the state emergency response board, except the administrator of the division of emergency management in the department of military affairs, shall expire on May 1 of each year.

(cs) No member of the auctioneer board, real estate appraisers board or real estate board may be an officer, director or employe of a private organization that promotes or furthers any profession or occupation regulated by that board.

(2) Selection of officers. At its first meeting in each year, every board shall elect a chairperson, vice chairperson and secretary each of whom may be reelected for successive terms, except that:

(a) The chairperson and vice chairperson of the investment board shall be designated biennially by the governor.

(b) The chairperson of the board on health care information shall be designated biennially by the governor.

(d) The officers elected by the board of regents of the university of Wisconsin system and the technical college system board shall be known as a president, vice president and secretary.

(e) The representative of the department of justice shall serve as chairperson of the claims board and the representative of the department of administration shall serve as its secretary.

(f) The secretary of education or his or her designated representative shall serve as chairperson of the school district boundary appeal board.

Note: Par. (f) is shown as amended eff. 1-1-96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95-2168-OA. Prior to Act 27 it read:

(f) The state superintendent of public instruction or his or her designated representative shall serve as chairperson of the school district boundary appeal board.

(g) A representative of the department of justice designated by the attorney general shall serve as nonvoting secretary to the law enforcement standards board.

(j) At its first meeting in each even-numbered year, the state capitol and executive residence board shall elect officers for 2-year terms.

(k) The administrator of the division of emergency management in the department of military affairs shall serve as chairperson of the state emergency response board.

(3) Frequency of meetings. (a) If a department or independent agency is under the direction and supervision of a board, the board shall meet quarterly and may meet at other times on the call of the chairperson or a majority of its members. If a department or independent agency is under the direction and supervision of a board, the board shall, in addition, meet no later than August 31 of each even-numbered year to consider and approve a proposed budget of the department or independent agency for the succeeding fiscal biennium.

(b) Except as provided in par. (bm), each board not covered under par. (a) shall meet annually, and may meet at other times on the call of the chairperson or a majority of its members. The auctioneer board, the real estate board and the real estate appraisers board shall also meet on the call of the secretary of regulation and licensing or his or her designee within the department.

(bm) 1. The board on health care information shall meet 4 times each year and may meet at other times on the call of the chairperson or a majority of the board's members.

2. The environmental education board shall meet 4 times each year and may meet at other times on the call of the chairperson.

3. The auctioneer board shall meet at least 4 times each year.

(4) Quorum. A majority of the membership of a board constitutes a quorum to do business and, unless a more restrictive provision is adopted by the board, a majority of a quorum may act in any matter within the jurisdiction of the board. This subsection does not apply to actions of the ethics board or the school district boundary appeal board as provided in ss. 19.47 (4) and 117.05 (2) (a).

(5) Reimbursement for expenses; compensation. Except as provided in sub. (5m), the members of each board shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an officer or employe of this state who represents an agency as a member of a board to be paid by the agency which pays the member's salary. The members shall receive no compensation for their services, except that the following members of boards, except full-time state officers or employes, also shall be paid the per diem stated below for each day on which they were actually and necessarily engaged in the performance of their duties:

(a) Members of the investment board, \$50 per day.

(b) Members of the banking review board, \$25 per day but not to exceed \$1,500 per year.

(c) Members of the auctioneer board, \$25 per day.

(d) Members of the board of agriculture, trade and consumer protection, not exceeding \$35 per day as fixed by the board with the approval of the governor, but not to exceed \$1,000 per year.

(e) In lieu of a per diem, the members of the technical college system board shall receive \$100 annually.

(f) Members of the teachers retirement board, appointive members of the Wisconsin retirement board, appointive members of the group insurance board, members of the deferred compensation board and members of the employe trust funds board, \$25 per day.

(g) Members of the savings and loan review board, \$10 per day.

(gm) Members of the savings bank review board, \$10 per day.

(h) Voting members of the land and water conservation board, \$25 per day.

(j) Members of the state fair park board, \$10 per day but not to exceed \$600 per year.

(k) Members of the ethics board, \$25 per day.

(L) Members of the school district boundary appeal board, \$25 per day.

(n) Members of the elections board, \$25 per day.

(o) Members of the burial sites preservation board, \$25 per day.

(q) Members of the American Indian language and culture education board, \$25 per day.

(r) Members of the real estate board, \$25 per day.

(s) Members of the credit union review board, \$25 per day but not to exceed \$1,500 per year.

(t) Members of the waste facility siting board who are town or county officials, \$35 per day.

(w) Members of the lower Wisconsin state riverway board, \$25 per day.

(x) Members of the real estate appraisers board, \$25 per day.

(y) Members of the Kickapoo reserve management board, \$25 per day.

(5m) Limitations on salary and expenses.

(b) Lower Wisconsin state riverway board. The members, except for the chairperson, of the lower Wisconsin state riverway board shall be reimbursed under sub. (5) for only their necessary and actual travel expenses incurred in the performance of their duties, or shall be paid \$25 plus mileage incurred in the performance of their duties, whichever is greater. The chairperson of the lower Wisconsin state riverway board shall be reimbursed for all his or her actual and necessary expenses incurred in the performance of his or her duties. The lower Wisconsin state riverway board shall determine which expenses of the chairperson are actual and necessary before reimbursement.

(6) Reports. Every board created in or attached to a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the board.

(7) Official oath. Each member of a board shall take and file the official oath prior to assuming office.

History: 1971 c. 100 s. 23; 1971 c. 125, 261, 270, 323; 1973 c. 90, 156, 299, 334; 1975 c. 39, 41, 422; 1977 c. 29 ss. 24, 26, 1650m (3); 1977 c. 203, 277, 418, 427; 1979 c. 34, 110, 221, 346; 1981 c. 20, 62, 94, 96, 156, 314, 346, 374, 391; 1983 a. 27, 282, 403; 1985 a. 20, 29, 316; 1987 a. 27, 119, 142, 354, 399, 403; 1989 a. 31, 102, 114, 219, 299, 340; 1991 a. 25, 39, 116, 221, 269, 316; 1993 a. 16, 75, 102, 184, 349, 399, 490; 1995 a. 27, 216, 247.

"Membership" as used in (4) means authorized number of positions and not number of positions which are currently occupied. 66 Atty. Gen. 192.

CHAPTER 29
FISH AND GAME

29.134 Fur dealers regulated.

Cross-reference: See definitions in s. 24.01.

29.134 Fur dealers regulated. (1) For the purpose of carrying out this section the following definitions for the expressions used are:

(a) "Dressed fur" means the dressed or tanned skins of any fur-bearing animal, but does not include fur in the manufactured article.

(b) "Fur auctioneer" means a person duly licensed to sell furs of wild-fur-bearing animals of this or other states or foreign countries. The department or its representatives may sell confiscated or other furs in its possession by auction or otherwise.

(c) "Fur dresser or dyer" means a person engaged in the business of dressing, dyeing, tanning and otherwise preparing furs to be made into manufactured articles.

(d) "Itinerant fur buyers" means persons other than resident fur dealers who engage in the business of buying, bartering, trading or otherwise obtaining raw furs from trappers or from fur buyers or fur dealers in retail lots for purposes of resale, except those buying furs at a nationally advertised public auction conducted by a regularly licensed fur auctioneer.

(e) "Raw fur" means the undressed skins or pelts of any fur-bearing animal.

(f) "Resident fur dealer, Class A" means persons having an established post or place of business in the state where they carry on the business of buying, bartering, trading and otherwise obtaining raw or dressed furs, to the amount of \$2,000 or more each year.

(g) "Resident fur dealer, Class B" means persons having an established post or place of business in the state where they carry on the business of buying, bartering, trading and otherwise obtaining raw or dressed furs, to the amount of less than \$2,000 each year.

(2) No person shall engage in the business of buying, bartering, bargaining, trading or otherwise obtaining raw furs until they shall have first secured a license therefor issued under this section.

(3) Licenses shall be issued by the department upon application. The form of application and license shall be prescribed by the department.

(5) Persons who have not had a place of business in the state for at least one year immediately preceding the date of application for such license, shall be issued itinerant fur buyers' licenses only.

(6) Each resident fur dealer, Class A; resident fur dealer, Class B; fur dresser or dyer; itinerant fur dealer or fur auctioneer license shall bear upon its face the date of issuance. The license shall be shown to the department or its wardens upon request.

(6m) (a) Every person licensed under this section shall keep a correct and complete book record in the English language of all transactions in the buying, selling, dressing, dyeing or tanning of raw furs carried on by the person. This record shall show the name and post-office address of each person from whom furs were purchased and to whom sold, together with the date of receipt and shipment, and a detailed account as to the number and kinds of raw furs in each shipment received or sold. This record shall be open to the inspection of the department and its agents and wardens at all reasonable hours. The records shall be kept intact for a period of 2 years after the expiration of any license issued under this section, as to all transactions carried on while such license was effective.

(b) Not less than 10 days before conducting a fur auction the fur auctioneer shall file with the department evidence of national advertising showing the date and place of such auction.

(c) Within 10 days after conducting any fur auction the fur auctioneer shall file with the department on forms furnished by it a report of such auction containing the date and place of the auction, the names and addresses of all persons buying furs taken from wild fur-bearing animals, the quantities and kinds of such furs bought, and the amounts paid for such furs by each buyer.

(7) All packages of raw furs shipped or transported by any person shall have plainly marked on the outside of the package or shipment the kinds and number of furs therein, the license number, and the name of the consignor and the consignee.

(8) No person on the person's own behalf or as an agent for a person, firm or corporation, express company or other common carrier, shall at any time or in any manner receive for shipment or cause to be received for shipment out of or in the state, any package of fur or furs unless the same is plainly marked on the outside of the package as to the number and kinds of fur contained therein, the license number, and the address of the consignor and consignee.

(9) All beaver and otter skins shipped into this state from Canada and other states must, upon arrival, be shown to the department or its wardens, and such department or its wardens shall stamp or mark said furs with a stamp or tag furnished by the department to show such furs are legally held and possessed.

(10) Nothing in this section shall prohibit persons from buying raw or dressed furs for the purpose of making themselves garments or robes of any kind, but such persons shall apply to the department or its wardens for permits to buy such furs.

(11) Any person who violates this section shall be fined not more than \$1,000, or imprisoned not more than 9 months, or both. Any person violating sub. (6m) shall forfeit not more than \$100.

History: 1975 c. 365; 1983 a. 27; 1991 a. 316.

CHAPTER 77
TAXATION OF FOREST CROPLANDS; REAL ESTATE TRANSFER FEES; SALES AND USE TAXES; COUNTY
AND SPECIAL DISTRICT SALES AND USE TAXES; MANAGED FOREST LAND; TEMPORARY RECYCLING
SURCHARGE; LOCAL FOOD AND BEVERAGE TAX; LOCAL RENTAL CAR TAX

SUBCHAPTER III
GENERAL SALES AND USE TAX

77.51 Definitions.

SUBCHAPTER III
GENERAL SALES AND USE TAX

77.51 Definitions. Except where the context requires otherwise, the definitions given in this section govern the construction of terms in this subchapter.

(1) "Business" includes any activity engaged in by any person or caused to be engaged in by any person with the object of gain, benefit or advantage, either direct or indirect, and includes also the furnishing and distributing of tangible personal property or taxable services for a consideration by social clubs and fraternal organizations to their members or others.

(1m) "Cloth diaper" means a cloth diaper used for sanitary purposes.

(2) "Contractors" and "subcontractors" are the consumers of tangible personal property used by them in real property construction activities and the sales and use tax applies to the sale of tangible personal property to them. In this subsection, "real property construction activities" include the fabrication of modular units designed and fabricated for a specific prefabricated building to be affixed to land at a particular location designated by the purchaser before the fabrication of the modules if the modular units will have a realty function and will become a permanent accession to the realty. A contractor engaged primarily in real property construction activities may use resale certificates only with respect to purchases of property which the contractor has sound reason to believe the contractor will sell to customers for whom the contractor will not perform real property construction activities involving the use of such property.

(3) "Department" means the department of revenue, its duly authorized employes and agents.

(3m) "Diaper service" means a business primarily engaged in the lease or rental, delivery and laundering of cloth diapers.

(4) (a) "Gross receipts" means the total amount of the sale, lease or rental price, as the case may be, from sales at retail of tangible personal property, or taxable services, valued in money, whether received in money or otherwise, without any deduction on account of the following:

1. The cost of the property sold;
2. The cost of the materials used, labor or service cost, interest paid, losses or any other expense;
3. The cost of transportation of the property prior to its sale to the purchaser;
4. Any tax included in or added to the purchase price, including the taxes imposed by ss. 78.01, 78.40, 139.02, 139.03 and 139.31, the federal motor fuel tax and any manufacturers' or importers' excise tax; but not including any tax imposed by the United States, any other tax imposed by this state or any tax imposed by any municipality of this state upon or with respect to retail sales whether imposed upon the retailer or the consumer if that federal, state or municipal tax is measured by a stated percentage of sales price or gross receipts or the federal communications tax imposed upon the services set forth in s. 77.52 (2) (a) 5. For purposes of the sales tax, if a retailer establishes to the

satisfaction of the department that the sales tax imposed by this subchapter has been added to the total amount of the sales price and has not been absorbed by the retailer, the total amount of the sales price shall be the amount received exclusive of the sales tax imposed. For the purpose of this subdivision, a tax shall be deemed "imposed upon or with respect to retail sales" only if the retailer is the person who is required to make the payment of the tax to the governmental unit levying the tax.

(b) "Gross receipts" shall not include:

1. Cash or term discounts allowed and taken on sales;
2. Such part of the sales price as is refunded in cash or credit as a result of property returned or adjustments in the sales price after the sale has been completed, provided the seller has included the said refunded receipts in a prior return made by such seller and has paid the tax thereon; and provided the seller has returned to the purchaser in cash or credit any and all tax previously paid by the purchaser on the amount of such refund at the time of the purchase.
3. In all transactions in which an article of tangible personal property is traded toward the purchase of an article of greater value, the gross receipts shall be only that portion of the purchase price represented by the difference between the full purchase price of the article of greater value and the amount allowed for the article traded.
4. In the case of accounts which are found to be worthless and charged off for income or franchise tax purposes, a retailer is relieved from liability for sales tax. A retailer who has previously paid the sales tax on such accounts may take as a deduction from the measure of the tax the amount found to be worthless and this deduction must be taken from the measure of the tax in the period in which said account is found to be worthless or within a reasonable time thereafter.
5. Transportation charges separately stated, if the transportation occurs after the sale of the property is made to the purchaser.
6. Thirty-five percent of the sale price of a new mobile home that is a primary housing unit under s. 340.01 (29) or of a new mobile home that is transported in 2 unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation. No credit may be allowed for trade-ins under subd. 3. or sub. (15) (b) 4. This subdivision does not apply to lease or rental.

(c) "Gross receipts" includes:

1. All receipts, cash, credits and property except as provided in par. (b) 3.
2. Any services that are a part of the sale of tangible personal property, including any fee, service charge, labor charge or other addition to the price charged a customer by the retailer which represents or is in lieu of a tip or gratuity.
3. The entire sales price of credit transactions in the reporting period in which the sale is made without reduction in the amount of tax payable by the retailer by reason of the retailer's transfer at a discount the open account, note, conditional sales contract, lease contract or other evidence of indebtedness. No reduction in the amount of tax payable by the retailer is allowable in the event property sold on credit

is repossessed except where the entire consideration paid by the purchaser is refunded to the purchaser or where a credit for a worthless account is allowable under par. (b) 4.

4. The price received for labor or services used in installing or applying tangible personal property sold, except the price received for installing or applying property which, when installed or applied, will constitute an addition or capital improvement of real property and provided such amount is separately set forth from the amount received for the tangible personal property.

5. If a lessor of tangible personal property reimbursed the vendor for sales tax on the sale of the property by the vendor to the lessor, the tax due from the lessor on the rental receipts may be offset by a credit equal to, but not exceeding, the tax otherwise due on the rental receipts from this property for the reporting period. The credit shall expire when the cumulative rental receipts equal the sales price upon which the vendor paid sales taxes to this state. If a purchaser of tangible personal property reimbursed the vendor of the property for sales tax on the sale and subsequently, prior to making any use of the property other than retention, demonstration or display while holding it for sale or rental, makes a taxable sale of the property, the tax due on the taxable sale may be offset by the tax reimbursed.

6. Charges associated with time-share property that is taxable under s. 77.52 (2) (a) 1. or 2.

(d) The department may, in cases where it is satisfied that an undue hardship would otherwise result, permit the reporting of "gross receipts" on some basis other than the accrual basis.

(5) For purposes of subs. (13) (e) and (f) and (14) (L) and s. 77.52 (2m) "incidental" means depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose of the service. Tangible personal property transferred by a service provider is incidental to the service if the purchaser's main purpose or objective is to obtain the service rather than the property, even though the property may be necessary or essential to providing the service.

(6) "In this state" or "in the state" means within the exterior limits of the state of Wisconsin.

(7) "Lease" includes rental, hire and license.

(8) "Newspaper" means those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly or other short intervals for the dissemination of current news and information of a general character and of a general interest to the public. In addition, any publication which qualifies as a newspaper under s. 985.03 (1) is a newspaper. "Newspaper" also includes advertising supplements if they are printed by a newspaper and distributed as a component part of one of that newspaper's publications or if they are printed by a newspaper or a commercial printer and sold to a newspaper for inclusion in publications of that newspaper. A "newspaper" does not include handbills, circulars, flyers, or the like, advertising supplements not described in this subsection which are distributed with a newspaper, nor any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within this subsection. In this subsection, advertising is not considered news of a general character and of a general interest.

(9) "Occasional sales" includes:

(a) Isolated and sporadic sales of tangible personal property or taxable services where the infrequency, in relation to the other circumstances, including the sales price and the gross profit, support the inference that the seller is not pursuing a vocation, occupation or business or a partial vocation or occupation or part-time business as a vendor of personal property or taxable services. No sale of any tangible personal property or taxable service may be deemed an occasional sale if at the time of such sale the seller holds or is required to hold a seller's permit, except that this provision does not apply to an organization required to hold

a seller's permit solely for the purpose of conducting bingo games and except as provided in par. (am).

(am) The sale of personal property, other than inventory held for sale, previously used by a seller to conduct its trade or business at a location after that person has ceased actively operating in the regular course of business as a seller of tangible personal property or taxable services at that location, even though the seller holds a seller's permit for one or more other locations.

(e) An auction which is the sale of personal farm property or household goods and not held at regular intervals.

(10) "Person" includes any natural person, firm, partnership, limited liability company, joint venture, joint stock company, association, public or private corporation, the United States, the state of Wisconsin, including any unit or division thereof, any county, city, village, town, municipal utility, municipal power district or other governmental unit, cooperative, estate, trust, receiver, executor, administrator, any other fiduciary, and any representative appointed by order of any court or otherwise acting on behalf of others.

(11) "Printing" and "imprinting" include lithography, photolithography, rotogravure, gravure, letterpress, silk screen printing, multilithing, multigraphing, mimeographing, photostating, steel die engraving and similar processes.

(12) "Purchase" includes:

(a) Any transfer of title, possession, ownership, enjoyment, or use by: cash or credit transaction, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever of tangible personal property for a consideration;

(b) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(13) "Retailer" includes:

(a) Every seller who makes any sale of tangible personal property or taxable service.

(am) Any person making any retail sale of a motor vehicle, aircraft, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle or boat registered or titled, or required to be registered or titled, under the laws of this state or of the United States.

(b) Every person engaged in the business of making sales of tangible personal property for storage, use or consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.

(c) When the department determines that it is necessary for the efficient administration of this subchapter to regard any salespersons, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making the sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the department may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this subchapter.

(d) Every wholesaler to the extent that the wholesaler sells tangible personal property to a person other than a seller as defined in sub. (17) provided such wholesaler is not expressly exempt from the sales tax on such sale or from collecting the use tax on such sale.

(e) A person selling tangible personal property to a service provider who transfers the property in conjunction with the selling, performing or furnishing of any service and the property is incidental to the service, unless the service provider is selling, performing or furnishing services under s. 77.52 (2) (a) 7., 10., 11. and 20. This subsection does not apply to sub. (2).

(f) A service provider who transfers tangible personal property in conjunction with but not incidental to the selling, performing or furnishing of any service and a service provider selling, performing or furnishing services under s.

77.52 (2) (a) 7., 10., 11. and 20. This subsection does not apply to sub. (2).

(i) A person selling materials or supplies to barbers, beauty shop operators or bootblacks for use by them in the performance of their services.

(j) A person selling materials and supplies to producers of X-ray films.

(k) As respects a lease, any person deriving rentals from a lease of tangible personal property situated in this state.

(m) A person selling tangible personal property to a veterinarian to be used or furnished by the veterinarian in the performance of services in some manner related to domestic animals, including pets or poultry.

(n) A person selling household furniture, furnishings, equipment, appliances or other items of tangible personal property to a landlord for use by tenants in leased or rented living quarters.

(o) A person selling medicine for animals to a veterinarian. As used in this paragraph, "animal" includes livestock, pets and poultry.

(13g) Except as provided in sub. (13h), "retailer engaged in business in this state", unless otherwise limited by federal statute, for purposes of the use tax, means any of the following:

(a) Any retailer owning any real property in this state or leasing or renting out any tangible personal property located in this state or maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.

(b) Any retailer having any representative, agent, salesperson, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering or the taking of orders for any tangible personal property or taxable services.

(13h) "Retailer engaged in business in this state", notwithstanding sub. (13g), beginning on the applicable date does not include a foreign corporation that is the publisher of printed materials the only activities of which in this state do not exceed the storage of its raw materials for any length of time in this state in or on property owned by a person other than the foreign corporation and the delivery of its raw materials to another person in this state if that storage and delivery are for printing by that other person, and the purchase from a printer of a printing service or of printed materials in this state for the publisher and the storage of the printed materials for any length of time in this state in or on property owned by a person other than the publisher and do not exceed maintaining, occupying and using, directly or by means of another person, a place that is in this state, that is not owned by the publisher and that is used for the distribution of printed materials. In this subsection, "applicable date" for publishers of books and periodicals other than catalogs means January 1, 1980, and for all other publishers means January 1, 1990. In this subsection "raw materials" means tangible personal property which becomes an ingredient or component part of the printed materials or which is consumed or destroyed or loses its identity in the printing of the printed materials.

(13r) Any person purchasing from a retailer as defined in sub. (13) shall be deemed the consumer of the tangible personal property or services purchased.

(14) "Sale", "sale, lease or rental", "retail sale", "sale at retail", or equivalent terms include any one or all of the following: the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property or services for use or consumption but not for resale as tangible personal property or services and includes:

(a) Any sale at an auction in respect to tangible personal property which is sold to a successful bidder. The proceeds from the sale of property sold at auction which is bid in by the seller and on which title does not pass to a new

purchaser shall be deducted from the gross proceeds of the sale and the tax paid only on the net proceeds.

(b) The furnishing or distributing of tangible personal property or taxable services for a consideration by social clubs and fraternal organizations to their members or others.

(c) A transaction whereby the possession of tangible personal property is transferred but the seller retains the title as security for the payment of the price.

(d) The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state. The person making the delivery shall include the retail selling price of the property in that person's gross receipts.

(f) The furnishing, preparing or serving for consideration of food, meals, confections or drinks.

(g) A sale of tangible personal property to a contractor or subcontractor for use in the performance of contracts with the United States or its instrumentalities for the construction of improvements on or to real property.

(h) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer or of any publication.

(i) Sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the erection of buildings or structures or the alteration, repair or improvement of real property. Such transactions are deemed retail sales in whatsoever quantity sold.

(j) The granting of possession of tangible personal property by a lessor to a lessee, or to another person at the direction of the lessee. Such a transaction is deemed a continuing sale in this state by the lessor for the duration of the lease as respects any period of time the leased property is situated in this state, irrespective of the time or place of delivery of the property to the lessee or such other person.

(k) Any sale of tangible personal property to a purchaser even though such property may be used or consumed by some other person to whom such purchaser transfers the tangible personal property without valuable consideration, such as gifts, and advertising specialties distributed gratis apart from the sale of other tangible personal property or service.

(L) Transfers by a service provider of tangible personal property in conjunction with but not incidental to the selling, performing or furnishing of any service, and transfers by a service provider selling, performing or furnishing services under s. 77.52 (2) (a) 7., 10., 11. and 20. This subsection does not apply to sub. (2).

(14g) "Sale" does not include: (a) The transfer of property to a corporation upon its organization solely in consideration for the issuance of its stock;

(b) The contribution of property to a newly formed partnership solely in consideration for a partnership interest therein;

(bm) The contribution of property to a limited liability company upon its organization solely in consideration for a membership interest;

(c) The transfer of property to a corporation, solely in consideration for the issuance of its stock, pursuant to a merger or consolidation;

(cm) The transfer of property to a limited liability company, solely in consideration for a membership interest, pursuant to a merger;

(d) The distribution of property by a corporation to its stockholders as a dividend or in whole or partial liquidation;

(e) The distribution of property by a partnership to its partners in whole or partial liquidation;

(em) The distribution of property by a limited liability company to its members in whole or partial liquidation;

(f) Repossession of property by the seller from the purchaser when the only consideration is cancellation of the purchaser's obligation to pay the remaining balance of the purchase price;

(g) The transfer of property in a reorganization as defined in section 368 of the internal revenue code in which no gain or loss is recognized for franchise or income tax purposes; or

(h) Any transfer of all or substantially all the property held or used by a person in the course of an activity requiring the holding of a seller's permit, if after the transfer the real or ultimate ownership of the property is substantially similar to that which existed before the transfer. For the purposes of this section, stockholders, bondholders, partners, members or other persons holding an interest in a corporation or other entity are regarded as having the real or ultimate ownership of the property of the corporation or other entity. In this paragraph, "substantially similar" means 80% or more of ownership.

(14r) A sale or purchase involving transfer of ownership of property shall be deemed to have been completed at the time and place when and where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent, except that for purposes of this subsection a common carrier or the U.S. postal service shall be deemed the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid.

(15) (a) "Sales price" means the total amount for which tangible personal property is sold, leased or rented, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold;
2. The cost of the materials used, labor or service cost, losses or any other expenses;
3. The cost of transportation of the property prior to its purchase;
4. Any tax included in or added to the purchase price including the taxes imposed by ss. 78.01, 78.40, 139.02, 139.03 and 139.31 and the federal motor fuel tax and including also any manufacturers' or importers' excise tax; but not including any tax imposed by the United States, any other tax imposed by this state, or any tax imposed by any municipality of this state upon or with respect to retail sales whether imposed on the retailer or consumer, if that federal, state or municipal tax is measured by a stated percentage of sales price or gross receipts, and not including the federal communications tax imposed upon the services set forth in s. 77.52 (2) (a) 5. For the purpose of this subdivision, a tax shall be deemed "imposed upon or with respect to retail sales" only if the retailer is the person who is required to make the payment of the tax to the governmental unit levying the tax.

(b) "Sales price" shall not include any of the following:

1. Cash discounts allowed and taken on sales;
2. The amount charged for property returned by customers when that entire amount is refunded either in cash or credit;
3. Transportation charges separately stated, if the transportation occurs after the purchase of the property is made.
4. In all transactions in which an article of tangible personal property is traded toward the purchase of an article of greater value, the sales price shall be only that portion of the purchase price represented by the difference between the full purchase price of the article of greater value and the amount allowed for the article traded.
5. Thirty-five percent of the total amount for which a new mobile home that is a primary housing unit under s. 340.01 (29) is sold. No credit may be allowed for trade-ins under subd. 4. or sub. (4) (b) 3. This subdivision does not apply to lease or rental.

(c) "Sales price" includes all of the following:

1. Any services that are a part of the sale of tangible personal property, including any fee, service charge, labor charge or other addition to the price charged a customer by the retailer which represents or is in lieu of a tip or gratuity.
2. The amount charged for labor or services rendered in installing or applying tangible personal property sold, except the price received for installing or applying property which, when installed or applied, will constitute an addition or

capital improvement of real property and provided such amount is separately set forth from the amount charged for the tangible personal property.

(16) "Sales tax" means the tax imposed by s. 77.52.

(17) "Seller" includes every person selling, leasing or renting tangible personal property or selling, performing or furnishing services of a kind the gross receipts from the sale, lease, rental, performance or furnishing of which are required to be included in the measure of the sales tax.

(17m) "Service address" means the location of the telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a buyer. If this is not a defined location; as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like; "service address" means the location where a buyer makes primary use of the telecommunications equipment as defined by telephone number, authorization code or location where bills are sent.

(18) "Storage" includes any keeping or retention in this state of tangible personal property purchased from a retailer for any purpose except the following:

(a) Sale in the regular course of business.

(b) Keeping, retaining or exercising any right or power over raw materials by a publisher or printer of printed materials for processing or fabricating or for manufacturing into, attachment to or incorporation into printed materials to be transported, and thereafter used solely, outside this state.

(20) "Tangible personal property" means all tangible personal property of every kind and description and includes electricity, natural gas, steam and water and also leased property affixed to realty if the lessor has the right to remove the property upon breach or termination of the lease agreement, unless the lessor of the property is also the lessor of the realty to which the property is affixed. "Tangible personal property" also includes coins and stamps of the United States sold or traded as collectors' items above their face value and computer programs except custom computer programs.

(21) "Taxpayer" means the person required to pay, collect, account for or who is otherwise directly interested in the taxes imposed by this subchapter.

(21m) "Telecommunications services" means sending messages and information transmitted through the use of local, toll and wide-area telephone service; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two-way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities. "Telecommunications services" does not include sending collect telecommunications that are received outside of the state.

(22) (a) "Use" includes the exercise of any right or power over tangible personal property or taxable services incident to the ownership, possession or enjoyment of the property or services, or the results produced by the services, including installation or affixation to real property and including the possession of, or the exercise of any right or power over tangible personal property by a lessee under a lease, except that "use" does not include the activities under sub. (18) (a) and (b).

(b) In this subsection "enjoyment" includes a purchaser's right to direct the disposition of property, whether or not the purchaser has possession of the property. "Enjoyment" also includes, but is not limited to, having shipped into this state by an out-of-state supplier printed material which is designed to promote the sale of property or services, or which is otherwise related to the business activities, of the purchaser of the printed material or printing service.

(23) "Use tax" means the tax imposed by s. 77.53.

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184.

Tax on personal property assets upheld since seller had permit under sub. (10) (a), 1983 stats. [now sub. (9) (a)]. *Ramrod, Inc. v. Dept. of Revenue*, 64 W (2d) 499, 219 NW (2d) 604.

Under sub. (18), 1983 stats. [now sub. (2)], building materials includes sale of assembly kit to dealers for construction of Harvestore silo and such dealers are contractors. Where Harvestore was erected on owned land, it is real property for purposes of this section. *Dept. of Revenue v. Smith Harvestore Products*, 72 W (2d) 60, 240 NW (2d) 357.

Retail sale within meaning of sub. (4), 1983 stats. [now sub. (14)] is the final and ultimate employment of the property which results in its withdrawal from the marketplace. See note to s. 77.52, citing *Dept. of Revenue v. Milw. Refining Corp.* 80 W (2d) 44, 257 NW (2d) 855.

Provisions of UCC as to time title passes are inapplicable to sales tax law. Application of 77.51 subsections discussed. *Harold W. Fuchs Agency, Inc. v. Dept. of Revenue*, 91 W (2d) 283, 282 NW (2d) 625 (Ct. App. 1979).

Sale of business assets of taxpayer which held seller's permit was not exempted as "occasional sale" under sub. (10) (a), 1983 stats. [now sub. (9) (a)]. Constitutionality discussed. *Midcontinent Broadcasting Co. v. Dept. of Revenue*, 98 W (2d) 379, 297 NW (2d) 191 (1980).

Manhole fabricator was not engaged in real property construction activities under (2). *Advance Pipe & Supply v. Revenue Dept.* 128 W (2d) 431, 383 NW (2d) 502 (Ct. App. 1986).

Photocopying expenses billed to law firm's clients are not subject to sales tax. *Frisch, Dudek & Slatery v. Rev. Dept.*, 133 W (2d) 444, 396 NW (2d) 355 (Ct. App. 1986).

CHAPTER 95
ANIMAL HEALTH

95.68 Livestock markets.
95.69 Livestock dealers.

Cross-reference: See definitions in s. 93.01.

95.68 Livestock markets. (1) Definitions. In this section: (a) "Equine animal" means a horse, mule, zebra, donkey or ass.

(b) "Equine market" means a livestock market that is open to the public solely for the purpose of trading in equine animals.

(d) "Livestock" means bovine animals, sheep, goats, swine, farm-raised deer and equine animals.

(e) "Livestock market" means any premises which are open to the public for the purpose of trading in livestock and on which facilities are maintained for their yarding, feeding and watering prior to sale.

(f) "Livestock vehicle" has the meaning given in s. 95.71 (1) (g).

(2) **License.** Except as provided in sub. (2m), no person may operate a livestock market without an annual license from the department. A livestock market license expires on June 30 annually. A separate license is required for every livestock market. A license is not transferable between persons or locations.

(2m) **Exception.** A person is not required to obtain a license under sub. (2) to operate an occasional auction sale sponsored by a livestock breeder association or a youth agricultural organization if records of the transactions at the sale are maintained by an auctioneer registered under ch. 480 or by a livestock dealer licensed under s. 95.69.

(3) **Application.** An application for a license under sub. (2) shall be made on a form provided by the department and shall include information reasonably required by the department for licensing purposes. An application shall be accompanied by the applicable fees and surcharges required under subs. (4) and (5).

(4) **Fees.** Unless the department specifies a different fee by rule, the fee for a livestock market license is the following amount:

(a) For a livestock market that is not an equine market and that conducted sales at the market on at least 5 days during the year immediately preceding the year for which the license is issued, \$150.

(b) For a livestock market that is not an equine market and that conducted sales on fewer than 5 days during the year immediately preceding the year for which the license is issued, \$75.

(c) For a livestock market other than one described in par. (a) or (b), \$100.

(5) **Surcharge and past fees.** (a) An applicant for a license under sub. (2) shall pay a license fee surcharge of \$100 if the department determines that within 365 days prior to submitting the license application the applicant did any of the following:

1. Operated a livestock market without a license in violation of sub. (2).

2. Operated an unregistered livestock vehicle in violation of sub. (7).

(b) In addition to the surcharge under par. (a), an applicant for a license under sub. (2) shall pay the fees due for the year in which the applicant was in violation of sub. (2) or (7).

(c) The payment of the surcharge and fees under this subsection does not relieve the applicant of other civil or criminal liability that may result from the failure to obtain a license or from the operation of an unregistered livestock

vehicle, but does not constitute evidence of a violation of a law.

(6) **License contingent on fees.** The department may not issue or renew a license under sub. (2) unless the applicant pays all fees and surcharges that are due under subs. (4) and (5) as set forth in a statement from the department. The department shall refund a fee or surcharge paid under protest if the department determines that the fee or surcharge was not due as a condition of licensing under this section. If a fee or surcharge is paid by check, a license issued in reliance upon that check is void if the check is not honored.

(7) **Livestock vehicle registration.** No livestock market operator may operate a livestock vehicle unless the livestock vehicle is registered with the department in the name of the livestock market operator. The livestock vehicle shall be registered on a form provided by the department. The registration shall include a description and the serial number of the livestock vehicle.

(8) **Rules.** The department may promulgate rules to specify license fees under sub. (4) or to regulate the operation of livestock markets, including rules related to market operator qualifications, market construction and maintenance, construction and maintenance of livestock vehicles, identification of livestock vehicles, disease sanitation, humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

(9) **Penalties.** A person conducting a business regulated by this section after revocation of his or her license shall be fined not less than \$500 nor more than \$1,000 or imprisoned not to exceed 6 months or both.

History: 1993 a. 16; 1995 a. 79, 95.

95.69 Livestock dealers. (1) Definitions. In this section:

(b) "Livestock" has the meaning given in s. 95.68 (1)

(d).

(c) "Livestock dealer" means a person who, as principal or agent, engages in the business of buying for resale or for slaughter, selling or exchanging livestock. "Livestock dealer" does not include any of the following:

1. A livestock dealer employee.

2. The operator of a farm who sells livestock if the operator keeps them on the farm solely for dairy, breeding or feeding purposes and the operator is not otherwise engaged in the business of buying them for resale, slaughter, sale or exchange.

3. An auctioneer registered under ch. 480 who conducts any of the following:

a. A farm sale at which no livestock is sold on a consignment basis.

b. A sale conducted at a state, county or district fair or a breeder association show.

c. A sale conducted by a youth agricultural organization.

(d) "Livestock dealer employee" means an employee of a licensed livestock dealer, who does business in the name of the licensed livestock dealer.

(e) "Livestock market" has the meaning given in s. 95.68 (1) (e).

(f) "Livestock vehicle" has the meaning given in s. 95.71 (1) (g).

(2) **License.** No person may operate as a livestock dealer without an annual license from the department, except

that no license is required of a person licensed as a livestock market operator under s. 95.68. A livestock dealer license expires on June 30 annually. A livestock dealer license is not transferable.

(3) Application. An application for a license under sub. (2) shall be made on a form provided by the department and shall include information reasonably required by the department for licensing purposes. An application shall be accompanied by the applicable fees and surcharges required under subs. (4) and (5).

(4) Fees. Unless the department specifies a different fee by rule, the fee for a livestock dealer license is \$75.

(5) Surcharge and past fees.

(a) An applicant for a license under sub. (2) shall pay a license fee surcharge of \$100 if the department determines that within 365 days prior to submitting the license application the applicant did any of the following:

1. Operated as a livestock dealer without a license in violation of sub. (2).
2. Operated an unregistered livestock vehicle in violation of sub. (7).

(b) In addition to the surcharge under par. (a), an applicant for a license under sub. (2) shall pay the fees due for the year in which the applicant was in violation of sub. (2) or (7).

(c) The payment of the surcharge and fees under this subsection does not relieve the applicant of other civil or criminal liability that may result from the failure to obtain a license or from the operation of an unregistered livestock vehicle but does not constitute evidence of a violation of a law.

(6) License contingent on fees. The department may not issue or renew a license under sub. (2) unless the applicant pays all fees and surcharges that are due under subs. (4) and (5) as set forth in a statement from the department. The department shall refund a fee or surcharge paid under protest if the department determines that the fee or surcharge was not due as a condition of licensing under this section. If a fee or surcharge is paid by check, a license issued in reliance upon that check is void if the check is not honored.

(7) Livestock vehicle registration. No livestock dealer may operate a livestock vehicle unless the livestock vehicle is registered with the department in the name of the livestock dealer. The livestock vehicle shall be registered in the name of the livestock dealer on a form provided by the department. The registration shall include a description and the serial number of the livestock vehicle.

(8) Rules. The department may promulgate rules to specify license fees under sub. (4) or to regulate livestock dealers, including rules related to livestock dealer qualifications, construction and maintenance of livestock vehicles, identification of livestock vehicles, disease sanitation, humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

(8m) Transaction records. An auctioneer registered under ch. 480 who sells livestock and who is not required to obtain a license under this section shall make records of the sales available to the department upon request for disease investigation purposes.

(9) Penalties. A person conducting a business regulated by this section after revocation of his or her license shall be fined not less than \$500 nor more than \$1,000 or imprisoned not to exceed 6 months or both.

History: 1993 a. 16; 1995 a. 95.

CHAPTER 100
MARKETING; TRADE PRACTICES

100.37 Hazardous substances act.
100.47 Sales of farm equipment.

Cross-reference: See definitions in s. 93.01.

100.37 Hazardous substances act. (1) In this section:

(a) "Corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action, but does not refer to action on inanimate surfaces.

(b) "Extremely flammable" applies to any substance which has a flash point at or below 20 degrees Fahrenheit as determined by the Tagliabue open cup tester, and "flammable" applies to any substance which has a flash point of above 20 degrees to 80 degrees Fahrenheit, as determined by the Tagliabue open cup tester; "combustible" applies to any substance which has a flash point above 80 degrees Fahrenheit to 150 degrees as determined by the Tagliabue open cup tester, except that flammability or combustibility of solids and of the contents of self-pressurized containers shall be determined by methods as prescribed under the federal hazardous substances act (15 USC 1261 et seq) or found by the department to be generally applicable to such materials or containers, and established by rules adopted by the department, which shall also define "flammable", "combustible" and "extremely flammable" in accordance with such methods.

(c) "Hazardous substance" means:

1. Any substance or mixture of substances, including a toy or other article intended for use by children, which is toxic, is corrosive, is an irritant, is a strong sensitizer, is flammable or combustible, or generates pressure through decomposition, heat or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.
2. Any substances which the department by rule finds, pursuant to sub. (2) (a), meet the requirements of subd. 1. 2m. Any substance included under sub. (2) (e) 2.
3. Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the department determines by rule that the substance is sufficiently hazardous to require labeling in accordance with this section in order to protect the public health.
4. Any toy or other article intended for use by children which the department by rule determines in accordance with this section to present an electrical, mechanical or thermal hazard or to contain a toxic substance either in or on the toy or other article.
5. Except as otherwise provided in this section, "hazardous substance" does not apply to pesticides subject to ss. 94.67 to 94.71, to foods, drugs and cosmetics, to bullets or other ammunition, or gun powder for reloading ammunition, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house, nor does it include any source material, special nuclear material or by-product material as defined in the atomic energy act of 1954, as amended, and regulations of the nuclear regulatory commission under such act.

(d) "Highly toxic" means any substance which falls within any of the following categories: Produces death within 14 days in half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram

of body weight, when orally administered; or produces death within 14 days in half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmosphere concentration of 200 parts per million by volume or less of gas or vapor or 2 milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by persons when the substance is used in any reasonably foreseeable manner; or produces death within 14 days in half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less. If the department finds that available data on human experience with any substance indicate results different from those obtained on animals in the above named dosages or concentrations, the human data shall take precedence.

(e) "Immediate container" does not include package liners.

(f) "Irritant" means any substance not corrosive which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

(g) "Label" means a display of written, printed or graphic matter upon the immediate container of any substance or upon an article or tag attached thereto in the case of unpackaged articles; and a requirement made by or under authority of this section that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if there is any, unless it is easily legible through the outside container or wrapper, and on all accompanying literature where there are directions for use, written or otherwise.

(h) "Misbranded package" or "misbranded package of a hazardous substance" means a hazardous substance in a container intended or suitable for household use, and includes a toy or other article intended for use by children whether or not in package form, which, except as otherwise provided under sub. (2), fails to bear a label:

1. Which states conspicuously the name and place of business of the manufacturer, packer, distributor or seller; the common or usual name, or the chemical name if there is no common or usual name, of the hazardous substance or of each component which contributes substantially to its hazard, unless the department by rule permits or requires the use of a recognized generic name; the signal word "DANGER" on substances which are extremely flammable, corrosive or highly toxic; the signal word "WARNING" or "CAUTION" on all other hazardous substances; an affirmative statement of the principal hazards, such as "Flammable", "Combustible", "Vapor harmful", "Causes burns", "Absorbed through skin" or similar wording descriptive of the hazard; precautionary measures describing the action to be followed or avoided, except when modified by rule of the department pursuant to sub. (2); instruction, when necessary or appropriate, for first-aid treatment; the word "poison" for any hazardous substance which is highly toxic; instructions for handling and storage of packages which require special care in handling or storage; and the statement "Keep out of the reach of children", or its practical equivalent or, if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard; and

2. On which any statements required under subd. 1. are located prominently and are in the English language in conspicuous and legible type in contrast by typography, layout or color with other printed matter on the label.

(hm) "Practitioner" has the meaning given in s. 961.01 (19).

(i) "Radioactive substance" means a substance which emits ionizing radiation.

(j) "Strong sensitizer" means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substances and which is designated as such by the department. Before designating any substance as a strong sensitizer, the department, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(k) "Toxic" applies to any substance, other than a radioactive substance, which has the capacity to produce personal injury or illness to persons through ingestion, inhalation, or absorption through any body surface.

(1m) (a) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

(b) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness from any of the following:

1. Fracture, fragmentation or disassembly of the article.
2. Propulsion of the article, or any part or accessory of the article.
3. Points or other protrusions, surfaces, edges, openings or closures.
4. Moving parts.
5. Lack or insufficiency of controls to reduce or stop motion.
6. Self-adhering characteristics of the article.
7. Aspiration or ingestion of the article, or any part or accessory of the article.
8. Instability of the article.
9. Any other aspect of the article's design or manufacture including the capability of producing sounds at a level of 138 decibels or higher.

(c) An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances or surfaces.

(2) (a) Whenever in the judgment of the department such action will promote the objectives of this section by avoiding or resolving uncertainty as to its application, the department may by rule declare to be a hazardous substance, for the purposes of this section, any substance or mixture of substances which it finds meets the requirements of sub. (1) (c) 1.

(b) If the department finds that the requirements of this section are not adequate for the protection of the public health and safety in view of the special hazards presented by any particular hazardous substance, it may by rule establish such reasonable variations or additional requirements as it finds necessary for the protection of the public health and safety.

(c) If the department finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this section is impracticable or is not necessary for the adequate protection of the public health and safety, it may exempt such substances from these requirements to the extent it determines to be consistent with adequate protection of the public health and safety.

(d) The department may by rule prohibit the sale of a hazardous substance if it finds that notwithstanding cautionary labeling that is or may be required the degree or nature of the hazard involved in the presence or use of such substance is such that the public health and safety can only be protected by keeping such substance out of the channels of commerce in this state.

(e) 1. The department may summarily ban the sale or distribution of any hazardous substance or article if it finds that the hazard to public health or safety is so great that such hazard should not be permitted to continue. The department shall follow the procedure specified in s. 93.18 (3).

2. In addition to subd. 1. and except as provided in subd. 3., all of the following are hazardous substances, possess such a degree of hazard that adequate cautionary labeling cannot be written and may not be sold or distributed:

a. Propyl nitrite, isopropyl nitrite and mixtures containing propyl nitrite or isopropyl nitrite.

b. The nitrous acid esters of all alcohols having the formula of 5 carbon atoms, 12 hydrogen atoms and one oxygen atom including 1-pentyl nitrite, 2-pentyl nitrite, 3-pentyl nitrite, 2-methyl-1-butyl nitrite, 3-methyl-1-butyl nitrite (also known as isoamyl nitrite or isopentyl nitrite), 2-methyl-2-butyl nitrite (also known as tertiary pentyl nitrite), 3-methyl-2-butyl nitrite, 2, 2-dimethylpropyl nitrite (also known as neopentyl nitrite) and mixtures containing more than 5% of 1-pentyl nitrite, 2-pentyl nitrite, 3-pentyl nitrite, 2-methyl-1-butyl nitrite, 3-methyl-1-butyl nitrite, 2-methyl-2-butyl nitrite, 3-methyl-2-butyl nitrite or 2, 2-dimethyl nitrite.

c. Ethyl chloride and ethyl nitrite.

d. Any toy containing elemental mercury.

3. Subdivisions 1. and 2. do not apply to the sale or distribution of isoamyl nitrite (3-methyl-1-butyl nitrite) or ethyl chloride as prescription drugs obtained from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of professional practice.

(f) The department may by rule prescribe the methods of sale of hazardous substances, including but not limited to glues, cements and hobby kit fuels, and may regulate the manner of display and restrict access by the general public to hazardous substances.

(g) The department may by rule prescribe package safety standards, including type of package material and safety closures for hazardous substances and pesticides, and may prohibit the sale of noncomplying or defective packages.

(h) The department may by rule limit or ban the use of any ingredient or combination of ingredients in any hazardous substance if it finds such action necessary to adequately protect the public health and safety.

(3) The following acts and the causing thereof are prohibited:

(a) The sale, or offering or exposing for sale of any misbranded package of a hazardous substance.

(b) The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance, if such act is done while the substance is held for sale, and results in the hazardous substance being in a misbranded package.

(c) The sale, or offering or exposing for sale of a hazardous substance in a reused food, drug or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug or cosmetic container by its labeling or by other identification. The reuse of a food, drug or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being in a misbranded package.

(d) The sale or offering for sale of any hazardous substance contrary to this section or to any rule or order of the department issued under this section.

(e) The sale or offering for sale, in violation of this section, of any article or substance which is a hazardous substance within the meaning of this section or the federal hazardous substances act (15 USC 1261 et seq).

(4) The department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating sub. (3); irrespective of whether or not there exists an adequate remedy at law.

(5) If the department has reasonable cause to believe that any substance is in violation of this section or poses an imminent hazard to public health or safety, it may deliver to the owner or custodian thereof an order prohibiting the sale or movement of such substance until an analysis or examination has been completed. Such holding order is not effective for more than 14 days from the time of delivery thereof. The substance described in any such holding order may not be sold or moved for any purpose without the approval of the department. If the department, after analysis or examination, determines that the substance described in such order is not in violation of this section, it shall promptly notify the owner or custodian thereof and such notice shall terminate the holding order. If the analysis or examination shows that the substance is in violation of this section, the owner or custodian thereof shall be so notified in writing within the effective time of the holding order. Upon receipt of such notice the owner or custodian may dispose of the substance only as authorized by the department. The owner or custodian of the substance or article may within 10 days of receipt of such notice petition for a hearing as provided in s. 93.18.

(6) Nothing in this section shall affect the application of any law of this state specifically regulating any substance regulated by this section.

(7) Any manufacturer, distributor or retailer of a misbranded or banned package containing a hazardous substance shall, on demand of any person purchasing such products from it, if the package is misbranded at the time of sale or banned, repurchase such product and refund the full purchase price thereof to the purchaser making the demand for refund. If the purchaser is required to return the product to the manufacturer, distributor or retailer as a condition to the repurchase and refund, the purchaser shall be reimbursed for any reasonable and necessary charges incurred in its return.

(8) Whoever violates this section may be fined not more than \$5,000 or imprisoned not more than one year in the county jail or both.

History: 1975 c. 94 s. 91 (10); 1975 c. 117; 1983 a. 189 ss. 140, 141, 329 (20); 1991 a. 39; 1993 a. 34; 1995 a. 225, 448.

Federal preemption—The consumer product safety act of 1976 and its effect on Wisconsin law. 1977 WLR 813.

100.47 Sales of farm equipment. (1) Definition. In this section, "farm equipment" means a tractor or other machinery used in the business of farming.

(2) Safety equipment required. No person in the business of selling farm equipment may sell farm equipment unless, at the time of sale, the farm equipment is equipped with all of the following:

(a) A power takeoff master shield, if a tractor.

(b) A power takeoff driveline shield extending to the 2nd universal joint, if farm equipment powered by a tractor.

(c) Lights and reflectors meeting the applicable requirements under ch. 347, if farm equipment that can be operated on a highway.

(d) A slow moving vehicle emblem meeting standards and specifications established under s. 347.245, if farm equipment that can be operated on a highway.

(3) Disclosure. If farm equipment subject to sub. (2) (b) is equipped with a power takeoff shield that is not equivalent to the shield installed at the time of manufacture, the person who sells the farm equipment shall so notify the buyer in writing.

(4) Exceptions. Subsection (2) does not apply to:

(a) Sales of farm equipment to another person in the business of selling farm equipment for the purpose of resale.

(b) Sales of farm equipment for the purpose of salvage.

(c) Sales by auction, unless the auctioneer holds title to the farm equipment being sold.

(5) Penalty. Any person who violates this section may be required to forfeit not more than \$500 for each violation.

History: 1993 a. 455; 1993 a. 491 s. 142; Stats. 1993 s. 100.47.

CHAPTER 125
ALCOHOL BEVERAGES

SUBCHAPTER I
GENERAL PROVISIONS

125.06 License and permit exceptions.

NOTE: Chapter 79, laws of 1981, which created this chapter of the statutes, contains extensive notes explaining the revisions. See the 1981 Session Laws.

SUBCHAPTER I
GENERAL PROVISIONS

125.06 License and permit exceptions. No license or permit is required under this chapter for:

(1) **Brewers' premises.** The furnishing, by brewers, of fermented malt beverages free of charge to customers, visitors and employes on the brewery premises if the fermented malt beverages are consumed on the brewery premises and are not furnished or consumed in or near any room or place where intoxicating liquor is sold.

(2) **Hospitals; practice of medicine or surgery.**

(a) The use of alcohol beverages in institutions licensed under subchs. I and II of ch. 50 where the beverages are used solely for medicinal, mechanical or scientific purposes.

(b) The use or prescription of alcohol beverages by a person licensed to practice medicine or surgery in the treatment of the sick.

(c) Notwithstanding pars. (a) and (b), a permit to receive shipments of alcohol under s. 125.61 must be obtained before alcohol beverages may be used or prescribed under pars. (a) and (b).

(3) **Homemade wine or fermented malt beverages.** The manufacture of wine or fermented malt beverages of any alcoholic content by any person at his or her home, farm or place of residence if the wine or fermented malt beverages is to be consumed by that person or his or her family and guests, and if the person manufacturing the wine or fermented malt beverages receives no compensation.

(4) **Unadulterated cider.** The manufacture or sale of unadulterated apple cider.

(5) **Railroads, aircraft.** The sale of alcohol beverages on any railroad dining, buffet or cafe car or aircraft, while in transit. Except as authorized under s. 125.26 (3m) or 125.51 (3) (dm), alcohol beverages may be consumed in a railroad dining, buffet or cafe car or aircraft only while it is in transit.

(6) **Public parks.** The sale of fermented malt beverages in any public park operated by a county or municipality. Fermented malt beverages shall be sold by officers or employes of the county or municipality under an ordinance, resolution, rule or regulation enacted by the governing body.

(7) **Judicial, personal representative's, guardian's, receiver's or trustee's sale.** The sale of alcohol beverages at any judicial, personal representative's or guardian's sale or any sale by a receiver or trustee in insolvency or bankruptcy, where the estate being administered possesses a license or permit in effect on the date of such sale.

(8) **Sale by secured party.** The sale of alcohol beverages by a secured party in good faith under the terms of a security agreement, if the sale is not for the purpose of avoiding this chapter or ch. 139. The sale must be in the ordinary course of the business of lending money secured by a security interest in alcohol beverages or warehouse receipts or other evidence of ownership.

(9) **Ceramic bottle collectors.** The sale of ceramic commemorative bottles or other uniquely designed decanters

which contain intoxicating liquor, by collectors of such containers to other collectors of such containers.

(10) **Raffles.** The awarding of alcohol beverages in original, unopened packages, containers or bottles as a prize, in a raffle conducted by an organization licensed to conduct the raffle under ch. 563, to any person who has attained the legal drinking age.

(11) **Auction sales.** The sale by an auction house at public auction of a collection of sealed bottles of intoxicating liquor or unopened beer cans for the purpose of settling an estate or disposing of the collection.

(12) **Bed and breakfast establishments.** The provision by a bed and breakfast establishment, as defined under s. 254.61 (1), of not more than 2 complimentary 4-fluid-ounce glasses of wine per day to a person renting a room at the bed and breakfast establishment for consumption on the premises of the bed and breakfast establishment.

History: 1981 c. 79, 202; 1983 a. 222, 360, 538; 1985 a. 337; 1987 a. 399; 1989 a. 253; 1991 a. 269; 1993 a. 226; 1995 a. 225.

CHAPTER 134
MISCELLANEOUS TRADE REGULATIONS

134.71 Pawnbrokers and secondhand article and jewelry dealers.

134.71 Pawnbrokers and secondhand article and jewelry dealers.

(1) Definitions. In this section:

(a) "Article" means any of the following articles except jewelry:

1. Audio-visual equipment.
2. Bicycles.
3. China.
4. Computers, printers, software and computer supplies.
5. Computer toys and games.
6. Crystal.
7. Electronic equipment.
8. Fur coats and other fur clothing.
9. Ammunition and knives.
10. Microwave ovens.
11. Office equipment.
12. Pianos, organs, guitars and other musical instruments.
13. Silverware and flatware.
14. Small electrical appliances.
15. Telephones.

(ag) "Auctioneer" means an individual who is registered as an auctioneer under ch. 480 and who sells secondhand articles or secondhand jewelry at an auction, as defined in s. 480.01 (1).

(am) "Charitable organization" means a corporation, trust or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) "Customer" means a person with whom a pawnbroker, secondhand article dealer or secondhand jewelry dealer or an agent thereof engages in a transaction of purchase, sale, receipt or exchange of any secondhand article or secondhand jewelry.

(c) "Jewelry" means any tangible personal property ordinarily wearable on the person and consisting in whole or in part of any metal, mineral or gem customarily regarded as precious or semiprecious.

(d) "Municipality" means a city, village or town.

(e) "Pawnbroker" means any person who engages in the business of lending money on the deposit or pledge of any article or jewelry, or purchasing any article or jewelry with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price.

(f) "Secondhand" means owned by any person, except a wholesaler, retailer or secondhand article dealer or secondhand jewelry dealer licensed under this section, immediately before the transaction at hand.

(g) "Secondhand article dealer" means any person, other than an auctioneer, who primarily engages in the business of purchasing or selling secondhand articles, except when engaging in any of the following:

1. Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem or antique show or a convention.

2. Any transaction entered into by a person while engaged in a business for which the person is licensed under sub. (2) or (4) or while engaged in the business of junk collector, junk dealer or scrap processor as described in s. 70.995 (2) (x).

3. Any transaction while operating as a charitable organization or conducting a sale the proceeds of which are donated to a charitable organization.

4. Any transaction between a buyer of a new article and the person who sold the article when new which involves any of the following:

a. The return of the article.

b. The exchange of the article for a different, new article.

5. Any transaction as a purchaser of a secondhand article from a charitable organization if the secondhand article was a gift to the charitable organization.

6. Any transaction as a seller of a secondhand article which the person bought from a charitable organization if the secondhand article was a gift to the charitable organization.

(h) "Secondhand jewelry dealer" means any person, other than an auctioneer, who engages in the business of any transaction consisting of purchasing, selling, receiving or exchanging secondhand jewelry, except for the following:

1. Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem or antique show or a convention.

2. Any transaction with a licensed secondhand jewelry dealer.

3. Any transaction entered into by a person while engaged in a business of smelting, refining, assaying or manufacturing precious metals, gems or valuable articles if the person has no retail operation open to the public.

4. Any transaction between a buyer of new jewelry and the person who sold the jewelry when new which involves any of the following:

a. The return of the jewelry.

b. The exchange of the jewelry for different, new jewelry.

5. Any transaction as a purchaser of secondhand jewelry from a charitable organization if the secondhand jewelry was a gift to the charitable organization.

6. Any transaction as a seller of secondhand jewelry which the person bought from a charitable organization if the secondhand jewelry was a gift to the charitable organization.

(2) **License for pawnbroker.** No person may operate as a pawnbroker unless the person first obtains a pawnbroker's license under this section. A license issued to a pawnbroker by the governing body of a municipality authorizes the licensee to operate as a pawnbroker in that municipality.

(3) License for secondhand article dealer.

(a) Except as provided in par. (b), no person may operate as a secondhand article dealer unless the person first obtains a secondhand article dealer's license under this section. A license issued to a secondhand article dealer authorizes the licensee to operate as a secondhand article dealer anywhere in the state.

(b) A person who operates as a secondhand article dealer only on premises or land owned by a person having a secondhand dealer mall or flea market license under sub. (9) need not obtain a secondhand article dealer's license.

(4) **License for secondhand jewelry dealer.** No person may operate as a secondhand jewelry dealer unless the person first obtains a secondhand jewelry dealer's license under this section. A license issued to a secondhand jewelry dealer authorizes the licensee to operate as a secondhand jewelry dealer anywhere in the state.

(5) **License application.** A person wishing to operate as a secondhand article dealer or a secondhand jewelry dealer and have a principal place of business in a municipality shall apply for a license to the clerk of that municipality. A person wishing to operate as a pawnbroker in a municipality shall apply for a license to the clerk of the

municipality. The clerk shall furnish application forms under sub. (12) that shall require all of the following:

(a) The applicant's name, place and date of birth and residence address.

(b) The names and addresses of the business and of the owner of the business premises.

(c) A statement as to whether the applicant has been convicted within the preceding 10 years of a felony or within the preceding 5 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of the licensed activity and, if so, the nature and date of the offense and the penalty assessed.

(d) Whether the applicant is a natural person, corporation, limited liability company or partnership, and:

1. If the applicant is a corporation, the state where incorporated and the names and addresses of all officers and directors.

2. If the applicant is a partnership, the names and addresses of all partners.

2L. If the applicant is a limited liability company, the names and addresses of all members.

(e) The name of the manager or proprietor of the business.

(f) Any other information that the county or municipal clerk may reasonably require.

(6) **Investigation of license applicant.** The law enforcement agency of the county or municipality shall investigate each applicant for a pawnbroker's, secondhand article dealer's or secondhand jewelry dealer's license to determine whether the applicant has been convicted within the preceding 10 years of a felony or within the preceding 5 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation described under sub. (5) (c) and, if so, the nature and date of the offense and the penalty assessed. The law enforcement agency shall furnish the information derived from that investigation in writing to the clerk of the municipality or county.

(7) **License issuance.** (a) The governing body of the county or municipality shall grant the license if all of the following apply:

1. The applicant, including an individual, a partner, a member of a limited liability company or an officer, director or agent of any corporate applicant, has not been convicted within the preceding 10 years of a felony or within the preceding 5 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of being a pawnbroker, secondhand jewelry dealer, secondhand article dealer or secondhand article dealer mall or flea market owner.

2. With respect to an applicant for a pawnbroker's license, the applicant provides to the governing body a bond of \$500, with not less than 2 sureties, for the observation of all municipal ordinances relating to pawnbrokers.

(b) No license issued under this subsection may be transferred.

(c) 1. Each license for a pawnbroker, secondhand article dealer or secondhand jewelry dealer is valid from January 1 until the following December 31.

2. Each license for a secondhand article dealer mall or flea market is valid for 2 years, from May 1 of an odd-numbered year until April 30 of the next odd-numbered year.

(8) **Pawnbroker and dealer requirements.**

(a) **Identification.** No pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from a customer without first securing adequate identification from the customer. At the time of the transaction, the pawnbroker, secondhand article dealer or secondhand jewelry dealer shall require the customer to present one of the following types of identification:

1. A county identification card.

2. A state identification card.

3. A valid Wisconsin motor vehicle operator's license.

4. A valid motor vehicle operator's license, containing a picture, issued by another state.

5. A military identification card.

6. A valid passport.

7. An alien registration card.

8. A senior citizen's identification card containing a photograph.

9. Any identification document issued by a state or federal government, whether or not containing a picture, if the pawnbroker, secondhand article dealer or secondhand jewelry dealer obtains a clear imprint of the customer's right index finger.

(b) **Transactions with minors.**

1. Except as provided in subd. 2., no pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from any minor.

2. A pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction described under subd. 1. if the minor is accompanied by his or her parent or guardian at the time of the transaction or if the minor provides the pawnbroker, secondhand article dealer or secondhand jewelry dealer with the parent's or guardian's written consent to engage in the particular transaction.

(c) **Records.**

1. Except as provided in subd. 2., for each transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from a customer, a pawnbroker, secondhand article dealer or secondhand jewelry dealer shall require the customer to complete and sign, in ink, the appropriate form provided under sub. (12). No entry on such a form may be erased, mutilated or changed. The pawnbroker, secondhand article dealer or secondhand jewelry dealer shall retain an original and a duplicate of each form for not less than one year after the date of the transaction except as provided in par. (e), and during that period shall make the duplicate available to any law enforcement officer for inspection at any reasonable time.

2. For every secondhand article purchased, received or exchanged by a secondhand article dealer from a customer off the secondhand article dealer's premises or consigned to the secondhand article dealer for sale on the secondhand article dealer's premises, the secondhand article dealer shall keep a written inventory. In this inventory the secondhand article dealer shall record the name and address of each customer, the date, time and place of the transaction and a detailed description of the article which is the subject of the transaction. The customer shall sign his or her name on a declaration of ownership of the secondhand article identified in the inventory and shall state that he or she owns the secondhand article. The secondhand article dealer shall retain an original and a duplicate of each entry and declaration of ownership relating to the purchase, receipt or exchange of any secondhand article for not less than one year after the date of the transaction except as provided in par. (e), and shall make duplicates of the inventory and declarations of ownership available to any law enforcement officer for inspection at any reasonable time.

(d) **Holding period.**

1. Except as provided in subd. 5., any secondhand article or secondhand jewelry purchased or received by a pawnbroker shall be kept on the pawnbroker's premises or other place for safekeeping for not less than 30 days after the date of purchase or receipt, unless the person known by the pawnbroker to be the lawful owner of the secondhand article or secondhand jewelry recovers it.

2. Except as provided in subd. 5., any secondhand article purchased or received by a secondhand article dealer shall be kept on the secondhand article dealer's premises or other place for safekeeping for not less than 10 days after the date of purchase or receipt.

3. Except as provided in subd. 5., any secondhand jewelry purchased or received by a secondhand jewelry dealer shall be kept on the secondhand jewelry dealer's premises or other place for safekeeping for not less than 15 days after the date of purchase or receipt.

4. During the period set forth in subd. 1., 2. or 3. the secondhand article or secondhand jewelry shall be held separate and apart and may not be altered in any manner. The pawnbroker, secondhand article dealer or secondhand jewelry dealer shall permit any law enforcement officer to inspect the secondhand article or secondhand jewelry during this period. Within 24 hours after a written request of a law enforcement officer during this period, a pawnbroker, secondhand article dealer or secondhand jewelry dealer shall make available for inspection any secondhand article or secondhand jewelry which is kept off the premises for safekeeping. Any law enforcement officer who has reason to believe any secondhand article or secondhand jewelry was not sold or exchanged by the lawful owner may direct a pawnbroker, secondhand article dealer or secondhand jewelry dealer to hold that secondhand article or secondhand jewelry for a reasonable length of time which the law enforcement officer considers necessary to identify it.

5. Subdivisions 1. to 4. do not apply to any of the following:

a. A coin of the United States, any gold or silver coin or gold or silver bullion.

b. A secondhand article or secondhand jewelry consigned to a pawnbroker, secondhand article dealer or secondhand jewelry dealer.

(e) *Report to law enforcement agency.* Within 24 hours after purchasing or receiving a secondhand article or secondhand jewelry, a pawnbroker, secondhand article dealer or secondhand jewelry dealer shall make available, for inspection by a law enforcement officer, the original form completed under par. (c) 1. or the inventory under par. (c) 2., whichever is appropriate. Notwithstanding s. 19.35 (1), a law enforcement agency receiving the original form or inventory or a declaration of ownership may disclose it only to another law enforcement agency.

(f) *Exception for customer return or exchange.* Nothing in this subsection applies to the return or exchange, from a customer to a secondhand article dealer or secondhand jewelry dealer, of any secondhand article or secondhand jewelry purchased from the secondhand article dealer or secondhand jewelry dealer.

(9) Secondhand article dealer mall or flea market.

(a) The owner of any premises or land upon which 2 or more persons operate as secondhand article dealers may obtain a secondhand article dealer mall or flea market license for the premises or land if the following conditions are met:

1. Each secondhand article dealer occupies a separate sales location and identifies himself or herself to the public as a separate secondhand article dealer.

2. The secondhand article dealer mall or flea market is operated under one name and at one address, and is under the control of the secondhand article dealer mall or flea market license holder.

4. Each secondhand article dealer delivers to the secondhand article dealer mall or flea market license holder, at the close of business on each day that the secondhand article dealer conducts business, a record of his or her sales that includes the location at which each sale was made.

(b) The secondhand article dealer license holder and each secondhand article dealer operating upon the premises or land shall comply with sub. (8).

(10) License revocation. A governing body of a county or municipality may revoke any license issued by it under this section for fraud, misrepresentation or false statement contained in the application for a license or for any violation of this section or s. 943.34, 948.62 or 948.63.

(11) Fees. The license fees under this section are:

(a) For a pawnbroker's license, \$210.

(b) For a secondhand article dealer's license, \$27.50.

(c) For a secondhand jewelry dealer's license, \$30.

(d) For a secondhand article dealer mall or flea market license, \$165.

(12) Applications and forms. The department of agriculture, trade and consumer protection shall develop applications and other forms required under subs. (5) (intro.) and (8) (c). The department shall print a sufficient number of applications and forms to provide to counties and municipalities for distribution to pawnbrokers, secondhand article dealers and secondhand jewelry dealers at no cost.

(13) Penalty.

(a) Upon conviction for a first offense under this section, a person shall forfeit not less than \$50 nor more than \$1,000.

(b) Upon conviction for a 2nd or subsequent offense under this section, a person shall forfeit not less than \$500 nor more than \$2,000.

(14) Ordinance. A county or municipality may enact an ordinance governing pawnbrokers, secondhand article dealers or secondhand jewelry dealers if that ordinance is at least as stringent as this section.

History: 1989 a. 257; 1991 a. 269; 1993 a. 102, 112, 246; 1995 a. 27.

CHAPTER 218
FINANCE COMPANIES, AUTO DEALERS, ADJUSTMENT COMPANIES AND COLLECTION AGENCIES

SUBCHAPTER VIII
MOTOR VEHICLE AUCTION DEALERS

218.30	Definitions.	218.32	When department to license auction dealer.
218.305	Motor vehicle auction dealers to be licensed.	218.33	Motor vehicle auction dealer to be bonded; conduct of auction
218.31	Application for auction dealer's license.		

SUBCHAPTER VIII
MOTOR VEHICLE AUCTION DEALERS

218.30 Definitions. In this subchapter:

(1) "Department" means the department of transportation.

(2) "License period" means the period during which a license issued under s. 218.32 is effective, as established by the department under s. 218.32 (2) (b) 1.

History: 1989 a. 31.

218.305 Motor vehicle auction dealers to be licensed. No person shall carry on or conduct the business of auctioning motor vehicles at wholesale unless licensed to do so by the department. Any person violating this section may be fined not less than \$25 nor more than \$200 or imprisoned not more than 60 days, or both.

History: 1971 c. 40; 1977 c. 29 s. 1654 (7) (a); 1989 a. 31 s. 2487dp; Stats. 1989 s. 218.305.

218.31 Application for auction dealer's license.

(1) Application for a motor vehicle auction dealer's license shall be made upon the form prescribed by the department and shall contain:

(a) The name and address of the applicant.

(b) When the applicant is a partnership, the name and address of each partner.

(bL) When the applicant is a limited liability company, the name and address of each member.

(c) When the applicant is a corporation, the names of the principal officers of the corporation and the name of the state in which incorporated.

(d) The place or places where the business is to be conducted and the nature of the business.

(e) Such other pertinent information as may be required by the department for the purpose of determining the eligibility of the applicant to be licensed.

(2) Every application shall be executed by the applicant, if an individual, or in the event the applicant is a partnership, limited liability company or corporation, by a partner, member or officer thereof. Every such application shall be accompanied by the fee required by law.

History: 1977 c. 29 s. 1654 (7) (a); 1993 a. 112.

218.32 When department to license auction dealer.

(1) The department shall issue a license certificate to the applicant for a motor vehicle auction dealer's license upon receipt of a properly completed application form accompanied by the fee required under sub. (2) (c) or (d) and upon being satisfied that the applicant is of good character and that, so far as can be ascertained, the applicant has complied with and will comply with the laws of this state with reference to ss. 218.305 to 218.33.

(2) (a) A motor vehicle auction dealer's license entitles the licensee to carry on and conduct the business of a motor vehicle auction dealer during the license period.

(b) 1. The department shall promulgate rules establishing a license period.

2. The department may promulgate rules establishing a uniform expiration date for all licenses issued under this section.

(c) Except as provided in par. (d), the fee for a license issued under this section equals \$50 multiplied by the number of years in the license period. The fee shall be prorated if the license period is not evenly divisible into years.

(d) If the department issues a license under this section during the license period, the fee for the license shall equal \$50 multiplied by the number of calendar years, including parts of calendar years, during which the license remains in effect. A fee determined under this paragraph may not exceed the license fee for the entire license period under par. (c).

(3) The department may deny, suspend or revoke a license on the following grounds:

(a) Proof of unfitness.

(b) Material misstatement in application for license.

(c) Filing a materially false or fraudulent income or franchise tax return as certified by the department of revenue.

(d) Wilful failure to comply with any provision of this section or any rule promulgated by the department under this section.

(e) Wilfully defrauding any retail buyer to the buyer's damage.

(f) Wilful failure to perform any written agreement with any retail buyer.

(g) Failure or refusal to furnish and keep in force any bond required.

(h) Having made a fraudulent sale, transaction or repossession.

(i) Fraudulent misrepresentation, circumvention or concealment through whatsoever subterfuge or device of any of the material particulars or the nature thereof required hereunder to be stated or furnished to the retail buyer.

(j) Employment of fraudulent devices, methods or practices in connection with compliance with the statutes with respect to the retaking of goods under retail instalment contracts and the redemption and resale of such goods.

(k) Having indulged in any unconscionable practice relating to said business.

(L) Having charged interest in excess of 15 per cent per year.

(m) Having sold a retail instalment contract to a sales finance company not licensed hereunder.

(n) Having violated any law relating to the sale, distribution or financing of motor vehicles.

(o) Failure to comply with ss. 218.305 to 218.33.

(4) (a) The licensor may without notice deny the application for a license within 60 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Within 30 days after such notice, the applicant may petition the division of hearings and appeals to conduct a hearing to review the denial, and a hearing shall be scheduled with reasonable promptness.

(b) No license shall be suspended or revoked except after a hearing thereon. The licensor shall give the licensee at least 5 days' notice of the time and place of such hearing. The order suspending or revoking such license shall not be effective until after 10 days' written notice thereof to the licensee, after such hearing has been had; except that the

licensor, when in its opinion the best interest of the public or the trade demands it, may suspend a license upon not less than 24 hours' notice of hearing and with not less than 24 hours' notice of the suspension of the license. Matters involving suspensions and revocations brought before the department shall be heard and decided upon by the division of hearings and appeals.

(c) The licensor may inspect the pertinent books, records, letters and contracts of a licensee. The actual cost of each such examination shall be paid by such licensee so examined within 30 days after demand therefor by the licensor, and the licensor may maintain an action for the recovery of such costs in any court of competent jurisdiction.

History: 1977 c. 29 ss. 1375, 1654 (7) (a), (e); 1977 c. 273; 1979 c. 110 s. 60 (13); 1981 c. 347 s. 80 (2); 1983 a. 192; 1989 a. 31; 1991 a. 39; 1993 a. 16.

218.33 Motor vehicle auction dealer to be bonded; conduct of auction business.

(1) Each licensee under s. 218.32 shall furnish and maintain a corporate surety bond in the amount of \$25,000 in such form as the department approves, conditioned upon the licensee's complying with the laws applicable to the licensee and as indemnity for any loss sustained by any person by reason of acts of the licensee constituting grounds for refusal or revocation of the auction dealer's license. The bond shall run to the state of Wisconsin for the benefit of aggrieved parties, but the aggregate liability of the surety for all such parties shall not exceed the amount of said bond.

(2) The following rules shall govern the conduct of motor vehicle auction sales:

(a) Sales of motor vehicles shall be confined to those offered by licensed motor vehicle dealers and shall be sold only to licensed motor vehicle dealers.

(b) For each motor vehicle offered for sale by a motor vehicle dealer, the transferring dealer shall provide the motor vehicle auction dealer with clear title or shall furnish title insurance at the time of the sale. For each motor vehicle sold at an auction, the motor vehicle auction dealer shall enter on the certificate of title, or on the form used to reassign the title, any information that the department requires to indicate that ownership of the vehicle was transferred through an auction sale.

(c) Payment for motor vehicles bought and sold shall be made immediately after sale.

(2m) Section 342.157 applies to motor vehicle auction sales under this section.

(3) Any person violating this section may be fined not less than \$25 nor more than \$200 or imprisoned not more than 60 days, or both.

History: 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1993 a. 159.

CHAPTER 402
UNIFORM COMMERCIAL CODE — SALES

GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT.

402.328 Sale by auction.

Cross-reference: See definitions in s. 401.201.

GENERAL OBLIGATION AND CONSTRUCTION OF
CONTRACT.

402.328 Sale by auction. (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in the auctioneer's discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until the auctioneer announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract a bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at the buyer's option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

History: 1991 a. 316.

CHAPTER 406
UNIFORM COMMERCIAL CODE — BULK TRANSFERS

406.101	Short title.	406.107	The notice.
406.102	"Bulk transfers"; transfers of equipment; enterprises subject to this chapter; bulk transfers subject to this chapter.	406.108	Auction sales; "auctioneer".
406.103	Transfers excepted from this chapter.	406.109	What creditors protected.
406.104	Schedule of property, list of creditors.	406.110	Subsequent transfers.
406.105	Notice to creditors.	406.111	Limitation of actions and levies.

Cross-reference: See definitions in s. 401.201.

406.101 Short title. This chapter shall be known and may be cited as uniform commercial code—bulk transfers.

406.102 "Bulk transfers"; transfers of equipment; enterprises subject to this chapter; bulk transfers subject to this chapter.

(1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part in value of the inventory (s. 409.109) of an enterprise subject to this chapter.

(2) A transfer of a substantial part of the equipment (s. 409.109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this chapter are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(3m) The sale, transfer or assignment, in bulk, of any stock of merchandise or of fixtures, pertaining to the merchandise, including any sale, transfer or assignment made in consideration of any existing indebtedness, otherwise than in the ordinary course of trade and in the usual conduct of business by retailers of alcohol beverages, is subject to this chapter.

(4) Except as limited by s. 406.103 all bulk transfers of goods located within this state are subject to this chapter.

History: 1981 c. 79.

406.103 Transfers excepted from this chapter.

(1) The following transfers are not subject to this chapter:

(a) Those made to give security for the performance of an obligation;

(b) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(c) Transfers in settlement or realization of a lien or other security interest;

(d) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(e) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(f) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(g) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and the transferor receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(h) Transfers of property which is exempt from execution.

(2) Public notice under sub. (1) (f) or (g) may be given by publication of a class 2 notice, under ch. 985, where the transferor had its principal place of business in this state. The notice shall include the names and addresses of the transferor and transferee and the effective date of the transfer.

History: 1991 a. 316.

406.104 Schedule of property, list of creditors.

(1) Except as provided with respect to auction sales (s. 406.108), a bulk transfer subject to this chapter is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of the transferor's existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for 6 months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule with the department of financial institutions.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or the transferor's agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against the transferor even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue. The list of creditors shall include the name and address of the clerk of the municipality in which the property was last assessed.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

History: 1991 a. 316; 1995 a. 27.

406.105 Notice to creditors. In addition to the requirements of s. 406.104, any bulk transfer subject to this chapter except one made by auction sale (s. 406.108) is ineffective against any creditor of the transferor unless at least 10 days before the transferee takes possession of the goods or pays the major part of the purchase price, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons specified in s. 406.107.

History: 1991 a. 316.

406.107 The notice.

(1) The notice to creditors (s. 406.105) shall state:

(a) That a bulk transfer is about to be made; and

(b) The names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within 3 years last past so far as known to the transferee; and

(c) Whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction,

and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) The location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) The address where the schedule of property and list of creditors (s. 406.104) may be inspected;

(c) Whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) Whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.

(3) The notice in any case shall be delivered personally or sent by registered mail or certified mail to all the persons shown on the list of creditors furnished by the transferor (s. 406.104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

406.108 Auction sales; "auctioneer".

(1) A bulk transfer is subject to this chapter even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of the transferor's creditors and assist in the preparation of a schedule of the property to be sold, both prepared as stated in s. 406.104.

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(a) Receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in s. 406.104; and

(b) Give notice of the auction personally or by registered or certified mail at least 10 days before it occurs to all persons shown on the list of creditors and to all other persons who are known to the auctioneer to hold or assert claims against the transferor.

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

History: 1991 a. 316.

406.109 What creditors protected. The creditors of the transferor mentioned in this chapter are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (ss. 406.105 and 406.107) are not entitled to notice.

406.110 Subsequent transfers. When the title of a transferee to property is subject to a defect by reason of the transferee's noncompliance with the requirements of this chapter, then:

(1) A purchaser of any of such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect, but

(2) A purchaser for value in good faith and without such notice takes free of such defect.

History: 1991 a. 316.

406.111 Limitation of actions and levies. No action under this chapter shall be brought nor levy made more than 6 months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within 6 months after its discovery.

CHAPTER 440
DEPARTMENT OF REGULATION AND LICENSING

SUBCHAPTER I
GENERAL PROVISIONS

440.01	Definitions.	440.06	Refunds and reexaminations.
440.02	Bonds.	440.07	Examination standards and services.
440.03	General duties and powers of the department.	440.08	Credential renewal.
440.035	General duties of examining boards and affiliated credentialing boards.	440.11	Change of name or address.
440.04	Duties of the secretary.	440.20	Disciplinary proceedings.
440.042	Advisory committees.	440.21	Enforcement of laws requiring credential.
440.045	Disputes.	440.22	Assessment of costs.
440.05	Standard fees.	440.23	Cancellation of credential; reinstatement.
440.055	Credit card payments.	440.25	Judicial review.

SUBCHAPTER I
GENERAL PROVISIONS

440.01 Definitions. (1) In chs. 440 to 480, unless the context requires otherwise:

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

(b) "Grant" means the substantive act of an examining board, section of an examining board, affiliated credentialing board or the department of approving the applicant for credentialing and the preparing, executing, signing or sealing of the credentialing.

(c) "Issue" means the procedural act of the department of transmitting the credential to the person who is credentialed.

(d) "Limit", when used in reference to limiting a credential, means to impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder's practice.

(dm) "Renewal date" means the date on which a credential expires and before which it must be renewed for the holder to maintain without interruption the rights, privileges and authority conferred by the credential.

(e) "Reprimand" means to publicly warn the holder of a credential.

(f) "Revoke", when used in reference to revoking a credential, means to completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.

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

(h) "Suspend", when used in reference to suspending a credential, means to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential.

(2) In this subchapter:

(a) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480.

(b) "Credentialing" means the acts of an examining board, section of an examining board, affiliated credentialing board or the department that relate to granting, issuing, denying, limiting, suspending or revoking a credential.

(c) "Examining board" includes the board of nursing.

(cm) "Liable for delinquent taxes" means that a person has been finally determined to be delinquent in the payment of taxes, including penalties, interest, fees and costs, under ch. 71, 72, 76, 77, 78, 125 or 139 and the person remains delinquent in the payment of those taxes at the time the department requests a certification under s. 440.08 (2r) of liability for delinquent taxes.

(cs) "Minority group member" has the meaning given in s. 560.036 (1) (f).

NOTE: Par. (cs) was created as 440.01 (2) (cm) by 1995 Wis. Act 333 and renumbered by the revisor under s. 13.93 (1) (b).

(d) "Reciprocal credential" means a credential granted by an examining board, section of an examining board, affiliated credentialing board or the department to an applicant who holds a credential issued by a governmental authority in a jurisdiction outside this state authorizing or qualifying the applicant to perform acts that are substantially the same as those acts authorized by the credential granted by the examining board, section of the examining board, affiliated credentialing board or department.

History: 1977 c. 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102, 107; 1995 a. 233, 333; s. 13.93 (1) (b).

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 promulgate rules defining uniform procedures to be used by the department, the real estate board, the real estate appraisers board, and all examining boards and affiliated credentialing boards attached to the department or an examining board, for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

(1m) The department may promulgate rules specifying the number of business days within which the department or any examining board or affiliated credentialing board in the department must review and make a determination on an application for a permit, as defined in s. 560.41 (2), that is issued under chs. 440 to 480.

(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 credentialing agencies, similar credentialing 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 or affiliated credentialing boards attached to the department or an examining board under s. 15.405 or 15.406.

(3m) The department may investigate complaints made against a person who has been issued a credential under chs. 440 to 480.

(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, an affiliated credentialing board attached to the medical examining board and the board of nursing under s. 655.045, as created by 1985 Wisconsin Act 29, and s. 655.26.

(7) The department shall establish the style, content and format of all credentials and of all forms for applying to the department for renewal of any credential issued under chs. 440 to 480. When establishing the format of credential renewal application forms, the department shall provide a place on the form for the information required under s. 440.08 (2g) (b). Upon request of any person who holds a credential and payment of a \$10 fee, the department may issue a wall certificate signed by the governor.

(8) The department may promulgate rules requiring holders of certain credentials to do any of the following:

(a) Display the credential in a conspicuous place in the holder's office or place of practice or business, if the holder is not required by statute to do so.

(b) Post a notice in a conspicuous place in the holder's office or place of practice or business describing the procedures for filing a complaint against the holder.

(9) The department shall include all of the following with each biennial budget request that it makes under s. 16.42:

(a) A recalculation of the administrative and enforcement costs of the department that are attributable to the regulation of each occupation or business under chs. 440 to 480 and that are included in the budget request.

(b) A recommended change to each fee specified under s. 440.05 (1) for an initial credential for which an examination is not required, under s. 440.05 (2) for a reciprocal credential and under s. 440.08 (2) (a) for a credential renewal if the change is necessary to reflect the approximate administrative and enforcement costs of the department that are attributable to the regulation of the particular occupation or business during the period in which the initial or reciprocal credential or credential renewal is in effect and, for purposes of the recommended change to each fee specified under s. 440.08 (2) (a) for a credential renewal, to reflect an estimate of any additional moneys available for the department's general program operations, during the budget period to which the biennial budget request applies, as a result of appropriation transfers that have been or are estimated to be made under s. 20.165 (1) (i) prior to and during that budget period.

(10) The department shall study whether continued certification of dietitians by the dietitians affiliated credentialing board, as created by 1993 Wisconsin Act 443, is necessary for the protection of the consumers of dietetic services. The department shall report the results of the study to the legislature under s. 13.172 (2) by July 1, 1998.

(11) The department shall cooperate with the department of health and family services to develop a program to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and family services in the evaluation of community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (e) and 455.065 (5).

(12) The department shall establish a procedure for making a request under s. 440.08 (2r) to the department of revenue to certify whether a credential holder is liable for delinquent taxes.

History: 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340; 1989 a. 31, 340; 1991 a. 39; 1993 a. 16, 102, 107, 443, 445, 490, 491; 1995 a. 27 ss. 6472g, 6472j, 9126 (19); 1995 a. 233.

440.035 General duties of examining boards and affiliated credentialing boards. Each examining board or

affiliated credentialing board attached to the department or an examining board shall:

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

(2) Be the supervising authority of all personnel, other than shared personnel, engaged in the review, investigation or handling of information regarding qualifications of applicants for credentials, examination questions and answers, accreditation, related investigations and disciplinary matters affecting persons who are credentialed by the examining board or affiliated credentialing board, or in the establishing of regulatory policy or the exercise of administrative discretion with regard to the qualifications or discipline of applicants or persons who are credentialed by the examining board, affiliated credentialing board or accreditation.

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

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

History: 1977 c. 418 ss. 25, 793, 929 (41); 1979 c. 32 s. 92 (1); 1979 c. 34; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 107.

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 and affiliated credentialing boards require, the routine housekeeping functions required by the department, the examining boards and the affiliated credentialing 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 and affiliated credentialing boards.

(3) Control the allocation, disbursement and budgeting of the funds received by the examining boards and affiliated credentialing boards in connection with their credentialing and regulation.

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

(5) With the advice of the examining boards or affiliated credentialing 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 or affiliated credentialing 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.

(7) Unless otherwise specified in chs. 440 to 480, provide examination development, administration, research and evaluation services as required.

(8) Collect data related to the registration of speech-language pathologists and audiologists under subch. III of ch. 459 and, on January 15, 1993, report the data and recommendations on whether the licensure of speech-language pathologists and audiologists under subch. II of ch. 459 is appropriate to the chief clerk of each house of the legislature for distribution in the manner provided under s. 13.172 (2).

(9) Annually prepare and submit a report to the legislature under s. 13.172 (2) on the number of minority group members who applied for licensure as a certified public accountant under ch. 442, the number who passed the examination required for licensure as a certified public accountant and the number who were issued a certified public accountant license under ch. 442, during the preceding year.

History: 1977 c. 418 s. 26; 1979 c. 34; 1981 c. 20; 1985 a. 29; 1987 a. 27; 1989 a. 316; 1991 a. 39; 1993 a. 102, 107; 1995 a. 333.

440.042 Advisory committees. (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his or her actual and necessary expenses incurred in the performance of his or her duties.

(2) Any person who in good faith testifies before the department or any examining board, affiliated credentialing board or board in the department or otherwise provides the department or any examining board, affiliated credentialing board or board in the department with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such advice or 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.

History: 1993 a. 16 ss. 3269, 3299; 1993 a. 107.

440.045 Disputes. Any dispute between an examining board or an affiliated credentialing 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; 1993 a. 107.

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

440.05 Standard fees. The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 442.06, 444.03, 444.05, 444.11, 449.17, 449.18 and 459.46:

(1) (a) Initial credential: \$39. Each applicant for an initial credential shall pay the initial credential fee to the department when the application materials for the initial credential are submitted to the department.

(b) Examination: If an examination is required, the applicant shall pay an examination fee. The fee for examination shall be an amount equal to the department's best estimate of the actual cost of preparing, administering and grading the examination or obtaining and administering an approved examination from a test service.

(2) Reciprocal credential, including any credential described in s. 440.01 (2) (d) and any credential that permits temporary practice in this state in whole or in part because the person holds a credential in another jurisdiction: The applicable credential renewal fee under s. 440.08 (2) (a) and, if an examination is required, an examination fee under sub. (1).

(6) Apprentice, journeyman, student or other temporary credential, granted pending completion of education, apprenticeship or examination requirements: \$10.

(7) Replacement of lost credential, name or address change on credential, issuance of duplicate credential or transfer of credential: \$10.

(9) Endorsement of persons who are credentialed 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; 1987 a. 264, 265, 329, 399, 403; 1989 a. 31, 229, 307, 316, 336, 340, 341, 359; 1991 a. 39, 269, 278, 315; 1993 a. 16; 1995 a. 27.

440.055 Credit card payments. (1) The department may accept payment by credit card of a fee that is required to be paid to the department under chs. 440 to 480.

(2) If the department permits the payment of a fee with use of a credit card under sub. (1), the department shall charge a credit card service charge for each transaction. The credit card service charge shall be in addition to the fee that is being paid with the credit card and shall be sufficient to pay the costs to the department for providing this service to persons who request it, including the cost of any services for which the department contracts under sub. (3).

(3) The department may contract for services relating to the payment of fees by credit card under this section.

History: 1995 a. 27.

440.06 Refunds and reexaminations. The secretary may establish uniform procedures for refunds of fees paid under s. 440.05 or 440.08 and uniform procedures and fees for reexaminations under chs. 440 to 480.

History: 1977 c. 418; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102.

440.07 Examination standards and services. (1) In addition to the standards specified in chs. 440 to 480, examinations for credentials shall reasonably relate to the skills likely to be needed for an applicant to practice in this state at the time of examination and shall seek to determine the applicant's preparedness to exercise the skills.

(2) The department, examining board or affiliated credentialing board having authority to credential applicants may do any of the following:

(a) Prepare, administer and grade examinations.

(b) Approve, in whole or in part, an examination prepared, administered and graded by a test service provider.

(3) The department may charge a fee to an applicant for a credential who fails an examination required for the credential and requests a review of his or her examination results. The fee shall be based on the cost of the review. No fee may be charged for the review unless the amount of the fee or the procedure for determining the amount of the fee is specified in rules promulgated by the department.

History: 1987 a. 27; 1991 a. 39; 1993 a. 102, 107.

Department of Regulation and Licensing test scores were subject to disclosure under the open records law. *Munroe v. Braatz*, 201 W (2d) 442, 549 NW (2d) 452 (Ct. App. 1996).

440.08 Credential renewal. (1) **Notice of renewal.** The department shall mail a notice of renewal to the last address provided to the department by each holder of a credential at least 30 days prior to the renewal date of the credential. Failure to receive a notice of renewal is not a defense in any disciplinary proceeding against the holder or in any proceeding against the holder for practicing without a credential. Failure to receive a notice of renewal does not relieve the holder from the obligation to pay a penalty for late renewal under sub. (3).

(2) **Renewal dates, fees and applications.**

(a) Except as provided in par. (b) and in ss. 440.51, 442.04, 442.06, 444.03, 444.05, 444.11, 448.065, 449.17, 449.18 and 459.46, the renewal dates and renewal fees for credentials are as follows:

1. Accountant, certified public: January 1 of each even-numbered year; \$47.
2. Accountant, public: January 1 of each even-numbered year; \$41.
3. Accounting corporation or partnership: January 1 of each even-numbered year; \$41.
4. Acupuncturist: July 1 of each odd-numbered year; \$95.
- 4m. Advanced practice nurse prescriber: October 1 of each even-numbered year; \$41.
5. Aesthetician: July 1 of each odd-numbered year; \$70.
6. Aesthetics establishment: July 1 of each odd-numbered year; \$116.
7. Aesthetics instructor: July 1 of each odd-numbered year; \$117.
8. Aesthetics school: July 1 of each odd-numbered year; \$74.

9. Aesthetics specialty school: July 1 of each odd-numbered year; \$41.
11. Appraiser, real estate, certified general: January 1 of each even-numbered year; \$82.
- 11m. Appraiser, real estate, certified residential: January 1 of each even-numbered year; \$82.
12. Appraiser, real estate, licensed: January 1 of each even-numbered year; \$49.
13. Architect: August 1 of each even-numbered year; \$46.
14. Architectural or engineering corporation: February 1 of each even-numbered year; \$41.
- 14g. Auction company: January 1 of each odd-numbered year; \$41.
- 14r. Auctioneer: January 1 of each odd-numbered year; \$41.
15. Audiologist: February 1 of each odd-numbered year; \$41.
16. Barbering or cosmetology establishment: July 1 of each odd-numbered year; \$41.
17. Barbering or cosmetology instructor: July 1 of each odd-numbered year; \$83.
18. Barbering or cosmetology manager: July 1 of each odd-numbered year; \$52.
19. Barbering or cosmetology school: July 1 of each odd-numbered year; \$78.
20. Barber or cosmetologist: July 1 of each odd-numbered year; \$48.
21. Cemetery authority: January 1 of each odd-numbered year; \$372.
22. Cemetery preneed seller: January 1 of each odd-numbered year; \$59.
23. Cemetery salesperson: January 1 of each odd-numbered year; \$65.
- 23m. Charitable organization: August 1 of each year; \$15.
24. Chiropractor: January 1 of each odd-numbered year; \$151.
25. Dental hygienist: October 1 of each odd-numbered year; \$41.
26. Dentist: October 1 of each odd-numbered year; \$96.
27. Designer of engineering systems: February 1 of each even-numbered year; \$41.
- 27m. Dietitian: November 1 of each even-numbered year; \$41. This subdivision does not apply after June 30, 1999.
28. Drug distributor: June 1 of each even-numbered year; \$41.
29. Drug manufacturer: June 1 of each even-numbered year; \$41.
30. Electrologist: July 1 of each odd-numbered year; \$56.
31. Electrology establishment: July 1 of each odd-numbered year; \$41.
32. Electrology instructor: July 1 of each odd-numbered year; \$73.
33. Electrology school: July 1 of each odd-numbered year; \$63.
34. Electrology specialty school: July 1 of each odd-numbered year; \$41.
35. Engineer, professional: August 1 of each even-numbered year; \$43.
- 35m. Fund-raising counsel: September 1 of each even-numbered year; \$41.
36. Funeral director: January 1 of each even-numbered year; \$94.
37. Funeral establishment: June 1 of each odd-numbered year; \$41.
- 37m. Geologist, professional: August 1 of each even-numbered year; \$41.
38. Hearing instrument specialist: February 1 of each even-numbered year; \$287.
- 38m. Landscape architect: August 1 of each even-numbered year; \$41.
39. Land surveyor: February 1 of each even-numbered year; \$73.
42. Manicuring establishment: July 1 of each odd-numbered year; \$41.
43. Manicuring instructor: July 1 of each odd-numbered year; \$138.
44. Manicuring school: July 1 of each odd-numbered year; \$85.
45. Manicuring specialty school: July 1 of each odd-numbered year; \$41.
46. Manicurist: July 1 of each odd-numbered year; \$52.
- 46m. Marriage and family therapist: July 1 of each odd-numbered year; \$63.
48. Nurse, licensed practical: May 1 of each odd-numbered year; \$49.
49. Nurse, registered: March 1 of each even-numbered year; \$46.
50. Nurse-midwife: March 1 of each even-numbered year; \$41.
51. Nursing home administrator: July 1 of each even-numbered year; \$114.
52. Occupational therapist: November 1 of each odd-numbered year; \$42.
53. Occupational therapy assistant: November 1 of each odd-numbered year; \$41.
54. Optometrist: January 1 of each even-numbered year; \$69.
55. Pharmacist: June 1 of each even-numbered year; \$76.
56. Pharmacy: June 1 of each even-numbered year; \$41.
57. Physical therapist: November 1 of each odd-numbered year; \$45.
58. Physician: November 1 of each odd-numbered year; \$102.
59. Physician assistant: November 1 of each odd-numbered year; \$48.
60. Podiatrist: November 1 of each odd-numbered year; \$187.
61. Private detective: September 1 of each even-numbered year; \$212.
62. Private detective agency: September 1 of each even-numbered year; \$41.
63. Private practice school psychologist: October 1 of each odd-numbered year; \$65.
- 63g. Private security person: September 1 of each even-numbered year; \$41.
- NOTE: Subd. 63g. is created eff. 7-1-97 by 1995 Wis. Act 461.
- 63m. Professional counselor: July 1 of each odd-numbered year; \$53.
- 63t. Professional fund-raiser: September 1 of each even-numbered year; \$41.
64. Psychologist: October 1 of each odd-numbered year; \$124.
65. Real estate broker: January 1 of each odd-numbered year; \$106.
66. Real estate corporation: January 1 of each odd-numbered year; \$72.
- 66m. Real estate partnership: January 1 of each odd-numbered year; \$69.
67. Real estate salesperson: January 1 of each odd-numbered year; \$70.
- 67m. Registered interior designer: August 1 of each even-numbered year; \$41.
68. Respiratory care practitioner: November 1 of each odd-numbered year; \$42.
- 68d. Social worker: July 1 of each odd-numbered year; \$43.
- 68h. Social worker, advanced practice: July 1 of each odd-numbered year; \$47.
- 68p. Social worker, independent: July 1 of each odd-numbered year; \$41.
- 68t. Social worker, independent clinical: July 1 of each odd-numbered year; \$50.
- 68v. Speech-language pathologist: February 1 of each odd-numbered year; \$46.
69. Time-share salesperson: January 1 of each odd-numbered year; \$102.
70. Veterinarian: January 1 of each even-numbered year; \$80.
71. Veterinary technician: January 1 of each even-numbered year; \$42.
- (b) The renewal fee for an apprentice, journeyman, student or temporary credential is \$10. The renewal dates

specified in par. (a) do not apply to apprentice, journeyman, student or temporary credentials.

(c) Renewal applications shall be submitted to the department on a form provided by the department that complies with sub. (2g) and, except as provided in sub. (3), shall include the applicable renewal fee specified in pars. (a) and (b).

(2g) Credential renewal application form.

(a) The department shall establish a credential renewal application form for use by all credential holders who apply to renew a credential issued under chs. 440 to 480.

(b) The form established under par. (a) shall require the applicant to do all of the following:

1. If the applicant is a natural person, provide his or her social security number.
2. If the applicant is not a natural person, provide its federal employer identification number.

(c) Neither the department nor any examining board or affiliated credentialing board may disclose a social security number obtained from an applicant for credential renewal on a form established under par. (a) to any person except to the department of revenue for the sole purpose of making the determination required under sub. (2r).

(2r) Certification concerning delinquent taxes. Except as provided in sub. (4) (b) 4., before granting an application to renew any credential issued under chs. 440 to 480, the department shall, in accordance with the procedure established under s. 440.03 (12), request the department of revenue to certify whether the applicant for the credential renewal is liable for delinquent taxes.

(3) Late renewal. (a) Except as provided in rules promulgated under par. (b), if the department does not receive an application to renew a credential before its renewal date, the holder of the credential may restore the credential by payment of the applicable renewal fee specified in sub. (2) (a) and by payment of a late renewal fee of \$25.

(b) The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines is necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

(4) Denial of credential renewal. (a) *Generally.* If the department or the interested examining board or affiliated credentialing board, as appropriate, determines that an applicant for renewal has failed to comply with sub. (2) (c) or (3) or with any other applicable requirement for renewal established under chs. 440 to 480 or that the denial of an application for renewal of a credential is necessary to protect the public health, safety or welfare, the department, examining board or affiliated credentialing board may summarily deny the application for renewal by mailing to the holder of the credential a notice of denial that includes a statement of the facts or conduct that warrant the denial and a notice that the holder may, within 30 days after the date on which the notice of denial is mailed, file a written request with the department to have the denial reviewed at a hearing before the department, if the department issued the credential, or before the examining board or affiliated credentialing board that issued the credential.

(b) Failure to pay delinquent taxes.

1. If the department of revenue certifies, after a request from the department of regulation and licensing under sub. (2r), that an applicant for renewal is liable for delinquent taxes, the department of regulation and licensing shall deny the applicant's application for credential renewal.

2. The department of regulation and licensing shall notify an applicant for credential renewal that his or her application has been denied under subd. 1. by mailing to the holder of the credential a notice of denial that includes a statement of the facts that warrant the denial under subd. 1. and a notice that the holder may, within 30 days after the date on which the notice of denial is mailed, file a written request with the department of revenue to have the certification of tax delinquency on which the denial is based reviewed at a hearing under s. 71.91 (8).

3. If the certification of tax delinquency that is the basis of a denial of a credential renewal application under subd. 1. is reviewed at a hearing under s. 71.91 (8) and the department of revenue informs the department of regulation and licensing that, as a result of the hearing, the department of revenue affirmed its certification that the applicant is liable for delinquent taxes, the department of regulation and licensing shall affirm its denial under subd. 1. of the applicant's credential renewal application. A credential holder may seek judicial review under ch. 227 in the circuit court for Dane County of an affirmation by the department of regulation and licensing of a denial under subd. 1.

4. If the department of regulation and licensing denies a credential renewal application under subd. 1. or affirms the denial of a credential renewal application under subd. 3. and the applicant subsequently reapplies for renewal of his or her credential, the department of regulation and licensing shall deny the applicant's application for credential renewal unless the applicant presents a certificate issued by the department of revenue that states that the applicant is not liable for delinquent taxes.

History: 1991 a. 39 ss. 3305, 3313; 1991 a. 78, 160, 167, 269, 278, 315; 1993 a. 3, 16, 102, 105, 107, 443, 463, 465; 1993 a. 490 ss. 228 to 230, 274, 275; 1995 a. 27, 233, 321, 322, 461.

440.11 Change of name or address. (1) An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department in writing of his or her new name or address within 30 days of the change.

(2) The department or any examining board, affiliated credentialing board or board in the department may serve any process, notice or demand on the holder of any credential by mailing it to the last-known address of the holder as indicated in the records of the department, examining board, affiliated credentialing board or board.

(3) Any person who fails to comply with sub. (1) shall be subject to a forfeiture of \$50.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107.

440.20 Disciplinary proceedings. (1) Any person may file a complaint before the department or any examining board, affiliated credentialing board or board in the department and request the department, examining board, affiliated credentialing board or board to commence disciplinary proceedings against any holder of a credential.

(2) The burden of proof in disciplinary proceedings before the department or any examining board, affiliated credentialing board or board in the department is a preponderance of the evidence.

(3) In addition to any grounds for discipline specified in chs. 440 to 480, the department or appropriate examining board, affiliated credentialing board or board in the department may reprimand the holder of a credential or deny, limit, suspend or revoke the credential of any person who intentionally violates s. 252.14 (2) or intentionally discloses the results of a blood test in violation of s. 252.15 (5) (a) or (5m).

History: 1977 c. 418; 1979 c. 34; 1985 a. 29; 1989 a. 31, 201; 1991 a. 39; 1993 a. 16, 27, 102, 107, 490.

Constitutionality of (3) upheld. *Gandhi v. Medical Examining Board*, 168 W (2d) 299, 483 NW (2d) 295 (Ct. App. 1992).

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. 75 Atty. Gen. 76.

440.21 Enforcement of laws requiring credential. (1) The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480.

(2) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

(3) In lieu of holding a public hearing, if the department has reason to believe that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may petition the circuit court for a temporary restraining order or an injunction as provided in ch. 813.

(4) (a) Any person who violates a special order issued under sub. (2) may be required to forfeit not more than \$10,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this paragraph.

(b) Any person who violates a temporary restraining order or an injunction issued by a court upon a petition under sub. (3) may be fined not less than \$25 nor more than \$5,000 or imprisoned for not more than one year in the county jail or both.

History: 1991 a. 39; 1993 a. 102.

440.22 Assessment of costs. (1) In this section, "costs of the proceeding" means the compensation and reasonable expenses of hearing examiners and of prosecuting attorneys for the department, examining board or affiliated credentialing board, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts and investigators, and compensation and expenses of a reporter for recording and transcribing testimony.

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

(3) In addition to any other discipline imposed, if the department, examining board, affiliated credentialing board or board assesses costs of the proceeding to the holder of the credential under sub. (2), the department, examining board, affiliated credentialing board or board may not restore, renew or otherwise issue any credential to the holder until the holder has made payment to the department under sub. (2) in the full amount assessed.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107.

440.23 Cancellation of credential; reinstatement. (1) If the holder of a credential pays a fee required under s. 440.05 (1) or (6), 440.08, 444.03, 444.05, 444.11 or 459.46 (2) (b) by check and the check is not paid by the bank upon which the check is drawn, the department may cancel the credential on or after the 60th day after the department receives the notice from the bank, subject to sub. (2).

(2) At least 20 days before canceling a credential, the department shall mail a notice to the holder of the credential that informs the holder that the check was not paid by the bank and that the holder's credential may be canceled on the date determined under sub. (1) unless the holder does all of the following before that date:

(a) Pays the fee for which the unpaid check was issued.

(b) If the fee paid under par. (a) is for renewal and the credential has expired, pays the applicable penalty for late renewal specified in s. 440.08 (3).

(c) Pays the charge for an unpaid draft established by the depository selection board under s. 20.905 (2).

(3) Nothing in sub. (1) or (2) prohibits the department from extending the date for cancellation to allow the holder additional time to comply with sub. (2) (a) to (c).

(4) A cancellation of a credential under this section completely terminates the credential and all rights, privileges and authority previously conferred by the credential.

(5) The department may reinstate a credential that has been canceled under this section only if the previous holder complies with sub. (2) (a) to (c) and pays a \$30 reinstatement fee.

History: 1989 a. 31; 1991 a. 39, 189, 269, 278, 315; 1993 a. 16; 1995 a. 27.

440.25 Judicial review. The department may seek judicial review under ch. 227 of any final disciplinary decision of the medical examining board or affiliated credentialing board attached to 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 or the interested affiliated credentialing 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; 1993 a. 107.

PART III
LICENSING OF AUCTIONS BY MUNICIPALITIES



State of Wisconsin
DEPARTMENT OF REGULATION AND LICENSING
CORRESPONDENCE/MEMORANDUM

DATE: May 6, 1994 **FILE REF:** AUB3.DOC
TO: Clete Hansen
FROM: Don Rittel
SUBJECT: Licensing of Auctions by Municipalities

ISSUES: You have asked whether municipalities retained the authority to regulate auctions after the repeal of Ch. 130, Stats., effective May 11, 1990; and if so, whether they may continue to do so after March 1, 1995, when state regulation of auctioneers by the Auctioneer Board goes into effect.

OPINION: In my opinion, the repeal of Ch. 130, Stats., did not divest municipalities of the authority to regulate auctioneers in light of the "Home Rule Amendment" contained in Article XI, Section 3 of the Wisconsin Constitution. However, municipalities may not continue to impose licensing or other requirements upon auctioneers which are inconsistent with the statewide regulation enacted pursuant to Ch. 480, Stats., beginning March 1, 1995.

DISCUSSION: 1993 Wisconsin Act 102 created Ch. 480 of the Wisconsin Statutes, mandating state licensure and regulation of auctioneers and auction companies effective March 1, 1995. Historically, auctions had been regulated locally by municipalities pursuant to Ch. 130, Stats. However, that provision was repealed by the Legislature effective May 11, 1990, by 1989 Wisconsin Act 336, §250op. Therefore, from May 11, 1990 to March 1, 1995, there will have been no *statute* specifically addressing the regulation of auctioneers at either the local or state level.

Your memo states: ". . .it appears that, absent any provision located elsewhere in the statutes which grants to municipalities the authority to license auction events or auctioneers, municipalities should have stopped licensing them after May 11, 1990."

If municipalities derived their regulatory authority solely from statutory enactments of the legislature (similar to the situation with this agency and the Auctioneer's Board), the above

assumption would be correct. However, municipalities are not dependent upon the legislature for all of their powers; but rather, derive independent regulatory authority under the Wisconsin Constitution.

Article XI, Section 3 of the Wisconsin Constitution (known as the "Home Rule Amendment" in case law) states, in part:

"Municipal home rule . . . Cities and villages organized pursuant to state laws may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the legislature."

There are a multitude of Wisconsin Supreme Court decisions which discuss the constitutional authority of a municipality to exercise its constitutional power over "local affairs" in light of the legislature's ability under the same constitutional provision to limit that power. Simply stated for our purposes, the cases boil down to the general proposition that a municipality may reasonably regulate any area of interest to the locality, unless the state has preempted the area through enacting legislation to require its regulation by the state, itself; or has statutorily directed municipalities regarding the specific manner in which the municipalities could regulate them. See, e.g., *Anchor Savings & Loan Ass'n v. Madison EOC*, 120 Wis. 2d 391 (1984), for a synopsis of some of the leading cases.

Accordingly, Chapter 130, can be viewed as a valid exercise of the legislature's authority to mandate that municipalities regulate auctions in a uniform manner, to the extent municipalities chose to regulate them. For example, Sec. 130.06 (1), Stats., provided that ordinances could be adopted to require that persons conducting auctions be licensed by the municipality, detailed the information required on the license application, and provided for specific licensing fees and bonding requirements.

In the absence of any state legislation, the conduct of auctions within a community would be a legitimate matter of "local affairs" which could be reasonably regulated by municipalities.¹ Accordingly, when Chapter 130 was repealed, effective May 11, 1990, the effect was not to deprive municipalities of their underlying authority granted by the Wisconsin Constitution to regulate auctions as a matter of local concern; but rather, removed the state "uniformity" requirements of such local regulation which the legislature had previously chosen to impose.

Therefore, it is my opinion that between May 11, 1990 and March 1, 1995 (the day state regulation of the area begins), municipalities may regulate auctions as a matter of determining their local affairs under the authority vested in them by the Home Rule Amendment contained in Article XI, §3 of the Wisconsin Constitution.

¹The fact that municipalities are no longer required to regulate auctions in conformity with the dictates of repealed Ch. 130, Stats., does not mean they are not subject to other legal restrictions. For example, municipal regulations must be "reasonable", in that the amount of license fees levied, or bond required, may not be so exorbitant as to essentially prohibit auctions from being conducted. See; 51 Am Jur 2d, Licenses and Permits, §39, pp. 46-7.

This will not be the case beginning March 1, 1995, however, when state regulation of auctioneering legally commences. As stated within the Home Rule Amendment, the regulatory authority of municipalities is subject to the legislature's power to determine uniform requirements in areas of statewide concern. Consistent with that authority, whereas the legislature previously took the approach of promoting uniformity through *local* enforcement under the Chapter 130, Stats., the creation of the Auctioneer Board by 1993 Wisconsin Act 102 is a clear pronouncement that subsequent regulation of auctioneers shall be the responsibility of the *state*, commencing March 1, 1995.

Case law indicates that regulation and control by the state under statutes which establish a comprehensive and all-encompassing scheme regarding the practices affected, serves to preempt any local regulation which conflicts with the general comprehensive policy established under the state. See, *Anchor Savings & Loan Ass'n, supra*. Chapter 480, Stats., is clearly such a "comprehensive and all-encompassing" scheme of regulation. It addresses the licensing of auctioneers and auction companies, the amount of licensing fees, licensing examinations and continuing education, the specific conduct of auctions, the keeping and maintenance of records, trust accounts, advertisements, provides for the possible establishment of a consumer protection fund, and the creation of a code of professional conduct and formal state disciplinary process. In my opinion, the scope of the regulatory system created within Ch. 480, Stats., is such that it clearly demonstrates the intent of the legislature to preempt local regulation of the area.

CONCLUSION: Accordingly, it is my opinion that municipalities may not regulate auctioneers after March 1, 1995, but may do so prior to that date.