

Chapter SPS 5

CHARITABLE SOLICITATIONS

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Note: Chapter RL 5 as it existed on December 31, 1993 was repealed and a new chapter RL 5 was created effective January 1, 1994. **Chapter RL 5 was renumbered chapter SPS 5 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.**

SPS 5.01 Authority. This chapter is adopted pursuant to ss. 227.11 (2), 440.42 (3) (am), 440.42 (8), and 440.455 (4), Stats., and s. 440.03 (13), Stats., as created by 1997 Wisconsin Act 27.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94; am. Register, May, 1999, No. 521, eff. 6-1-99.

SPS 5.02 Definitions. In this chapter:

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

(2) “Charitable organization” has the meaning given in s. 440.41 (1), Stats.

Note: A private foundation which solicits contributions in this state or has contributions solicited in this state on its behalf falls under this definition.

Note: An organization which is exempt from registration requirements under s. 440.42 (5), Stats., is exempt from the reporting requirement of this chapter.

(2m) “Community” means the county in which a charitable organization’s principal office is located.

(3) “Group return” means a financial report submitted by a central organization.

(4) “Operates” means engages in solicitation, as defined in s. 440.41 (9), Stats.

(5) “Principal office” means the address most recently provided to the department by a charitable organization on an application for registration or a written notice of a change of the charitable organization’s address.

(6) “Private foundation” means an organization defined in section 509 of the internal revenue code.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94; renum. and am. (1) (intro.) to be (2), r. (1) (a) and (b), cr. (1), renum. (2) to be (2m) and am. (3), Register, May, 1999, No. 521, eff. 6-1-99.

SPS 5.03 Applications for exemption. The department shall grant an exemption from the reporting requirement in s. 440.42 (3) (a), Stats., and the disclosure requirements in s. 440.455 (1) and (2), Stats., to a registered charitable organization that operates solely within one community and that receives less than \$50,000 in contributions during its most recently completed fiscal year, provided that the charitable organization satisfies the following conditions:

(1) **EXEMPTION FROM ANNUAL REPORT.** A registered charitable organization which, pursuant to s. 440.42 (3) (am), Stats., applies for an exemption from the reporting requirement under s. 440.42 (3) (a), Stats., shall file an affidavit, as provided in s. SPS 5.04, within 6 months after the end of the charitable organization’s fiscal year.

(2) **EXEMPTION FROM DISCLOSURE REQUIREMENTS.** A registered charitable organization which desires to be exempted from the solicitation disclosure requirements of s. 440.455 (1) and (2), Stats., may apply for the exemption by filing the affidavit prescribed by s. SPS 5.04. A registered charitable organization which has applied for the exemption may not conduct solicitations without making the disclosures required under s. 440.455 (1) and (2),

Stats., until the registered charitable organization has received written notice from the department that the department has granted the exemption. A registered charitable organization may qualify for the exemption from solicitation disclosures regardless of whether it uses a professional fund-raiser or an unpaid solicitor for the solicitation of contributions to the registered charitable organization.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94; **correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 5.04 Affidavits relating to exemptions. Registered charitable organizations which file an affidavit pursuant to s. 440.42 (3) (c), Stats., or s. SPS 5.03 (1) and (2) shall provide the affidavit on a form prescribed by the department. The form shall require at least the following information:

(1) The name, address and telephone number of the organization.

(2) The registration number assigned to the organization by the department.

(3) The beginning and ending date of the organization’s fiscal year to which the exemption applies or on which the application for exemption is based.

(4) The name, address and telephone number of any professional fund-raiser or fund-raising counsel which solicited contributions on behalf of the charitable organization or with whom the charitable organization contracted for services during the most recently-completed fiscal year.

(5) A statement that the organization qualifies for an exemption and the reason why the organization believes it qualifies for the exemption.

(6) The signature of 2 authorized officers, including the chief fiscal officer, of the charitable organization. The officers shall swear that the information in the affidavit is true.

Note: A copy of the affidavit form may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94; **correction in (intro.) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 5.05 Exemption of professional fund-raiser from solicitation disclosure requirements. If a registered charitable organization obtains an exemption from the solicitation disclosure requirements in s. 440.455 (1) and (2), Stats., a professional fund-raiser or an unpaid solicitor who solicits contributions on behalf of the registered charitable organization is also exempt from the solicitation disclosure requirements in s. 440.455 (1) and (2), Stats., when soliciting contributions on behalf of the registered charitable organization; however, a professional fund-raiser may not, under any circumstances, be exempted from the solicitation requirements in s. 440.455 (3), Stats.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94.

SPS 5.06 Procedures for registering a charitable organization. (1) **APPLICATION FOR REGISTRATION.** An applicant for registration as a charitable organization shall submit to the department an application on a form prepared by the department,

a registration statement that complies with s. 440.42 (2), Stats., and the fee specified in s. 440.42 (1) (b) 3., Stats. Pursuant to s. 440.42 (2) (m), Stats., the department may require information about a professional fund-raiser or fund-raising counsel whose services the charitable organization uses and information about whether any officers, directors, trustees or executive officers of the charitable organization have been convicted of a felony or a misdemeanor. Subject to ss. 111.321, 111.322 and 111.335, Stats., the department may deny or limit the registration of a charitable organization which has an officer, director, trustee or executive officer who has been convicted of a felony or a misdemeanor.

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

Note: A copy of the application form may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94; am. Register, May, 1999, No. 521, eff. 6-1-99.

SPS 5.07 Procedures for registering as a professional fund-raiser or fund-raising counsel. (1) APPLICATION FOR REGISTRATION. An applicant for registration as a professional fund-raiser or fund-raising counsel shall file an application on a form prepared by the department and fee pursuant to s. 440.43 or 440.44, Stats., as applicable.

(2) BOND. An applicant for registration as a professional fund-raiser or a fund-raising counsel shall file a bond pursuant to s. 440.43 or 440.44, Stats., as applicable, on a form provided by the department or on a form acceptable to the department.

Note: A copy of the application form and 3 bond forms, each of which provides for a different level of coverage, may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94.

SPS 5.075 Criteria relating to registration as a professional fund-raiser or a fund-raising counsel. (1) In determining whether a person is required to register as a fund-raising counsel under s. 440.43, Stats., or a professional fund-raiser under s. 440.44, Stats., the department evaluates the obligations of the person to determine whether the person's responsibilities are limited to preparing and sending mailings for a registered charitable organization as distinguished from the function of making a mailing under the person's own name.

(2) For the limited purpose of determining whether a person is required to register as a professional fund-raiser under s. 440.44, Stats., a person does not "solicit" in this state or employ,

engage or provide, directly or indirectly, another person to "solicit in this state" as those terms are used in s. 440.41 (7), Stats., if all of the following apply:

- (a) The person mails requests for contributions.
- (b) The contents of the mailing identify a charitable organization as the person requesting the contributions.
- (c) The contents of the mailing do not include the name of the professional fund-raiser or the fund-raising counsel.

History: Cr. Register, May, 1999, No. 521, eff. 6-1-99.

SPS 5.08 Annual financial reports. (1) REGISTERED CHARITABLE ORGANIZATIONS. Only charitable organizations which are registered or are required to be registered with the department are required to file an annual report or an affidavit in lieu of an annual report with the department.

(2) CONTENTS OF ANNUAL REPORTS. The annual report form prepared by the department shall request the financial information required in s. 440.42 (3) (a) 1., 2. and 3., Stats., and shall include questions which bring current the information which a charitable organization provided to the department in an earlier registration pursuant to s. 440.42 (2) (a), Stats. The annual report form prepared by the department will require no other financial information.

(3) STANDARDS FOR COMPLETION OF ANNUAL REPORTS. An annual financial report submitted to the department pursuant to s. 440.42 (3), Stats., by a charitable organization which is registered or required to be registered shall be complete, accurate and truthful. It shall include all schedules and attachments required by the form prepared by the department pursuant to s. 440.42 (3) (a), Stats., or prepared by another person pursuant to s. 440.42 (4), Stats. A charitable organization which files with the department financial information which it has filed with another state or the federal government shall complete a supplemental form prepared by the department which requires additional information to comply with sub. (2).

Note: The annual report form and the supplemental form may be obtained upon request from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(3m) EXCEPTION FOR CONTRIBUTION LIMIT REQUIRING AN AUDIT WITH OPINION. The \$100,000 contribution limit in s. 440.42 (3) (b), Stats., is raised to \$175,000 if a charitable organization has received during its most recently completed fiscal year one or more contributions from one contributor totaling \$75,000 or more.

(4) GROUP FILING OF ANNUAL REPORT. Pursuant to s. 440.42 (4), Stats., the department may accept information properly filed with the federal government as a group return by a charitable organization which is registered or required to be registered, provided that the group return complies with subs. (2) and (3).

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94; cr. (3m), Register, May, 1999, No. 521, eff. 6-1-99.