

## CHAPTER 440

## DEPARTMENT OF REGULATION AND LICENSING

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## 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.

(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.

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. 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 trans-

fers 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.

NOTE: Sub. (10) is created eff. 7-1-95 by 1993 Wis. Act 443.

(11) The department shall cooperate with the department of health and social services to develop a program to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and social 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).

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.

**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).

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.

**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. 440.41, 440.51, 442.06, 444.03, 444.05, 444.11, 449.17, 449.18 and 459.46:

(1) (a) Initial credential: \$34. 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: \$50.

(6) Apprentice, journeyman, student or temporary credential or limited permit: \$10.

(7) Replacement of lost credential, name or address change on credential, issuance of duplicate credential or transfer of credential: \$5.

(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.

**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.

**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. 440.42, 440.43, 440.44, 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; \$44.

2. Accountant, public: January 1 of each even-numbered year; \$36.

3. Accounting corporation or partnership: January 1 of each even-numbered year; \$36.

4. Acupuncturist: July 1 of each odd-numbered year; \$36.

5. Aestheticsian: July 1 of each odd-numbered year; \$54.

6. Aesthetics establishment: July 1 of each odd-numbered year; \$111.

7. Aesthetics instructor: July 1 of each odd-numbered year; \$85.

8. Aesthetics school: July 1 of each odd-numbered year; \$36.

9. Aesthetics specialty school: July 1 of each odd-numbered year; \$36.

10. Animal technician: January 1 of each even-numbered year; \$42.

11. Appraiser, real estate, certified general: January 1 of each even-numbered year; \$58.

11m. Appraiser, real estate, certified residential: January 1 of each even-numbered year; \$49.

12. Appraiser, real estate, licensed: January 1 of each even-numbered year; \$57.
13. Architect: August 1 of each even-numbered year; \$40.
14. Architectural or engineering corporation: February 1 of each even-numbered year; \$36.
- 14g. Auction company: January 1 of each odd-numbered year; \$37.
- 14r. Auctioneer: January 1 of each odd-numbered year; \$37.
15. Audiologist: February 1 of each odd-numbered year; \$59.
16. Barbering or cosmetology establishment: July 1 of each odd-numbered year; \$36.
17. Barbering or cosmetology instructor: July 1 of each odd-numbered year; \$101.
18. Barbering or cosmetology manager: July 1 of each odd-numbered year; \$40.
19. Barbering or cosmetology school: July 1 of each odd-numbered year; \$100.
20. Barber or cosmetologist: July 1 of each odd-numbered year; \$42.
21. Cemetery authority: January 1 of each odd-numbered year; \$271.
22. Cemetery preneed seller: January 1 of each odd-numbered year; \$44.
23. Cemetery salesperson: January 1 of each odd-numbered year; \$42.
24. Chiropractor: January 1 of each odd-numbered year; \$106.
25. Dental hygienist: October 1 of each odd-numbered year; \$36.
26. Dentist: October 1 of each odd-numbered year; \$67.
27. Designer of engineering systems: February 1 of each even-numbered year; \$36.
- 27m. Dietitian: November 1 of each even-numbered year; \$36. This subdivision does not apply after June 30, 1999.
- NOTE: Subd. 27m. is created eff. 7-1-95 by 1993 Wis. Act 443.
28. Drug distributor: June 1 of each even-numbered year; \$36.
29. Drug manufacturer: June 1 of each even-numbered year; \$36.
30. Electrologist: July 1 of each odd-numbered year; \$50.
31. Electrology establishment: July 1 of each odd-numbered year; \$36.
32. Electrology instructor: July 1 of each odd-numbered year; \$107.
33. Electrology school: July 1 of each odd-numbered year; \$107.
34. Electrology specialty school: July 1 of each odd-numbered year; \$36.
35. Engineer, professional: August 1 of each even-numbered year; \$36.
36. Funeral director: January 1 of each even-numbered year; \$80.
37. Funeral establishment: June 1 of each odd-numbered year; \$36.
- 37m. Geologist, professional: August 1 of each even-numbered year; \$36.
38. Hearing instrument specialist: February 1 of each even-numbered year; \$179.
- 38m. Landscape architect: August 1 of each even-numbered year; \$36.
39. Land surveyor: February 1 of each even-numbered year; \$54.
40. Loan originator: January 1 of each odd-numbered year; \$155.
41. Loan solicitor: January 1 of each odd-numbered year; \$210.
42. Manicuring establishment: July 1 of each odd-numbered year; \$36.
43. Manicuring instructor: July 1 of each odd-numbered year; \$90.
44. Manicuring school: July 1 of each odd-numbered year; \$102.
45. Manicuring specialty school: July 1 of each odd-numbered year; \$36.
46. Manicurist: July 1 of each odd-numbered year; \$42.
- 46m. Marriage and family therapist: July 1 of each odd-numbered year; \$36.
47. Mortgage banker: January 1 of each odd-numbered year; \$330.
48. Nurse, licensed practical: May 1 of each odd-numbered year; \$40.
49. Nurse, registered: March 1 of each even-numbered year; \$40.
50. Nurse-midwife: March 1 of each even-numbered year; \$36.
51. Nursing home administrator: July 1 of each even-numbered year; \$63.
52. Occupational therapist: November 1 of each odd-numbered year; \$37.
53. Occupational therapy assistant: November 1 of each odd-numbered year; \$36.
54. Optometrist: January 1 of each even-numbered year; \$66.
55. Pharmacist: June 1 of each even-numbered year; \$78.
56. Pharmacy: June 1 of each even-numbered year; \$36.
57. Physical therapist: November 1 of each odd-numbered year; \$40.
58. Physician: November 1 of each odd-numbered year; \$111.
59. Physician assistant: November 1 of each odd-numbered year; \$36.
60. Podiatrist: November 1 of each odd-numbered year; \$79.
61. Private detective: September 1 of each even-numbered year; \$120.
62. Private detective agency: September 1 of each even-numbered year; \$36.
63. Private practice school psychologist: October 1 of each odd-numbered year; \$36.
- 63m. Professional counselor: July 1 of each odd-numbered year; \$36.
64. Psychologist: October 1 of each odd-numbered year; \$82.
65. Real estate broker: January 1 of each odd-numbered year; \$74.
66. Real estate corporation or partnership: January 1 of each odd-numbered year; \$46.
67. Real estate salesperson: January 1 of each odd-numbered year; \$55.
68. Respiratory care practitioner: November 1 of each odd-numbered year; \$38.
- 68d. Social worker: July 1 of each odd-numbered year; \$36.
- 68h. Social worker, advanced practice: July 1 of each odd-numbered year; \$36.
- 68p. Social worker, independent: July 1 of each odd-numbered year; \$36.
- 68t. Social worker, independent clinical: July 1 of each odd-numbered year; \$36.
- 68v. Speech-language pathologist: February 1 of each odd-numbered year; \$41.
69. Time-share salesperson: January 1 of each odd-numbered year; \$36.
70. Veterinarian: January 1 of each even-numbered year; \$67.

(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 and, except as provided in sub. (3), shall include the applicable renewal fee specified in pars. (a) and (b).

(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 the following amount:

1. If the application is received by the department less than 30 days after the renewal date, \$5.

2. If the application is received by the department 30 days or more after the renewal date, \$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 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, have the denial reviewed at a hearing before the department, examining board or affiliated credentialing board.

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

**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.

(3) 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.

(4) 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), 440.42 (1), 440.43 (1), 440.44 (1), 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.

**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.

## SUBCHAPTER II

## PRIVATE DETECTIVES

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

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

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

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

1. A private detective agency license may be issued to an individual, partnership, limited liability company or corporation. An individual, the members of a partnership or limited liability company and the officers or directors of a corporation, having a private detective agency license, are not required to have a private detec-

tive license unless actually engaged in the work of a private detective.

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

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

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

(3) **ISSUANCE OF LICENSES; FEES.** Upon receipt and examination of an application executed under sub. (2), and after any investigation that it considers necessary, the department shall, if it determines that the applicant is qualified, grant the proper license upon payment of the fee specified in s. 440.05 (1). No license shall be issued for a longer period than 2 years, and the license of a private detective shall expire on the renewal date of the agency's license even though the private detective's license may not have been in effect for a full 2 years. Renewals of the original licenses issued under this section shall be issued in accordance with renewal forms prescribed by the department and shall be accompanied by the fees specified in s. 440.08. The department may not renew a license unless the applicant provides evidence that the applicant has in force at the time of renewal the bond or liability policy specified in this section.

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

(5) **EXEMPTIONS; PRIVATE SECURITY PERMIT.** This section does not apply to any person employed, directly or indirectly by the state or municipality as defined in s. 345.05 (1) (c), or to any employe of a railroad company under s. 192.47, or employes of commercial establishments, who operate exclusively on their premises. An employe of any licensed agency doing business in this state as a supplier of uniformed security personnel to patrol exclusively on the private property of industrial plants, business establishments, schools, colleges, hospitals, sports stadiums, exhibits and similar activities are exempt from the license requirements of this section while engaged in such employment, if the person obtains a private security permit under this section. The agency shall furnish upon request an up-to-date record of its employes to the chief of police or other local law enforcement official designated by the department for the municipality wherein such activities take place. Such record shall include the name, residence address, date of birth and a physical description of each such employe together with a recent photograph and 2 fingerprint cards bearing a complete set of fingerprints of the employe, and, subject to ss. 111.321, 111.322 and 111.335, no person shall be eligible for a private security permit who has been convicted in this state or elsewhere of a felony within 5 years preceding application. The agency shall notify the chief of police or other designated official in writing within 5 days of any change of the resi-

dence address or of the termination of employment of such person. A private security permit shall be issued or denied within 48 hours of application by the chief of police or other designated official. The permit shall remain valid unless for just cause revoked by the chief of police or other designated official issuing the permit for just cause. Upon denial or revocation of a permit, appeal may be taken to the department. The chief of police or other designated official may charge the agency a fee of not more than \$10 for issuing the permit.

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

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

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

**History:** 1971 c. 213 s. 5; 1977 c. 29, 125, 418; 1979 c. 102 ss. 45, 236 (3); 1981 c. 334 s. 25 (1); 1981 c. 380, 391; 1983 a. 189 s. 329 (31); 1983 a. 273; 1985 a. 128, 135; 1991 a. 39, 269; 1993 a. 112, 213.

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

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

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

This section doesn't apply to qualified arson experts or other expert witnesses merely because they may investigate matters relating to their field of expertise. 76 Atty Gen. 35.

### SUBCHAPTER III

#### SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES

**440.41 Definitions.** In this subchapter:

(1) "Charitable organization" means any of the following:

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

(b) A person who is or purports to be established for a charitable purpose.

(2) "Charitable purpose" means any of the following:

(a) A purpose described in section 501 (c) (3) of the internal revenue code.

(b) A benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or other eleemosynary objective.

(3) "Charitable sales promotion" means an advertising or sales campaign, conducted by a person who is regularly and primarily engaged in trade or commerce for profit other than in con-

nection with soliciting, which represents that the purchase or use of goods or services offered will benefit, in whole or in part, a charitable organization or charitable purpose.

(4) "Commercial coventurer" means a person who is regularly and primarily engaged in trade or commerce for profit other than in connection with soliciting and who conducts a charitable sales promotion.

(5) "Contribution" means a grant or pledge of money, credit, property or other thing of any kind or value, except used clothing or household goods, to a charitable organization or for a charitable purpose. "Contribution" does not include income from bingo or raffles conducted under ch. 563, a government grant, or a bona fide fee, due or assessment paid by a member of a charitable organization, except that, if initial membership is conferred solely as consideration for making a grant or pledge of money in response to a solicitation, the grant or pledge of money is a contribution.

(5m) "Financial institution" has the meaning given in s. 705.01 (3).

(6) "Fund-raising counsel" means a person who, for compensation, plans, manages, advises, consults or prepares material for, or with respect to, solicitation in this state for a charitable organization, but who does not solicit and who does not employ, engage or provide any person who is paid to solicit contributions. "Fund-raising counsel" does not include an attorney, investment counselor or employe of a financial institution who advises a person to make a contribution or a bona fide employe, volunteer or salaried officer of a charitable organization.

(7) "Professional fund-raiser" means a person who, for compensation, solicits in this state or employs, engages or provides, directly or indirectly, another person who is paid to solicit in this state. "Professional fund-raiser" does not include an attorney, investment counselor or employe of a financial institution who advises a person to make a charitable contribution, a bona fide employe, volunteer, wholly owned subsidiary or salaried officer of a charitable organization, an employe of a temporary help agency who is placed with a charitable organization or a bona fide employe of a person who employs another person to solicit in this state.

(8) "Solicit" means to request, directly or indirectly, a contribution and to state or imply that the contribution will be used for a charitable purpose or will benefit a charitable organization.

(9) "Solicitation" means the act or practice of soliciting, whether or not the person soliciting receives any contribution. "Solicitation" includes any of the following methods of requesting or securing a contribution:

(a) An oral or written request.

(b) An announcement to the news media or by radio, television, telephone, telegraph or other transmission of images or information concerning the request for contributions by or for a charitable organization or charitable purpose.

(c) The distribution or posting of a handbill, written advertisement or other publication which directly or by implication seeks contributions.

(d) The sale of, or offer or attempt to sell, a membership or an advertisement, advertising space, book, card, tag, coupon, device, magazine, merchandise, subscription, flower, ticket, candy, cookie or other tangible item in connection with any of the following:

1. A request for financial support for a charitable organization or charitable purpose.

2. The use of or reference to the name of a charitable organization as a reason for making a purchase.

3. A statement that all or a part of the proceeds from the sale will be used for a charitable purpose or will benefit a charitable organization.

(10) "Unpaid solicitor" means a person who solicits in this state and who is not a professional fund-raiser.

History: 1991 a. 278, 315.

#### 440.42 Regulation of charitable organizations.

(1) ANNUAL REGISTRATION REQUIREMENT (a) Except as provided in sub. (5), no charitable organization may solicit in this state or have contributions solicited in this state on its behalf unless it is registered with the department under this subsection.

(b) The department shall promptly register a charitable organization that does all of the following:

1. Submits to the department an application for registration on a form provided by the department.

2. Submits to the department a registration statement that complies with sub. (2).

3. Pays to the department a \$15 registration fee.

(c) The department shall issue a certificate of registration to each charitable organization that is registered under this subsection. Certificates issued under this paragraph expire 6 months after the end of the charitable organization's most recently completed fiscal year. Renewal applications shall be submitted to the department, on a form provided by the department, on or before the expiration date of the certificate and shall include a registration statement that complies with sub. (2) and a \$15 renewal fee.

(d) Within 20 days after receiving an application for registration or for renewal of a registration under this subsection, the department shall notify the charitable organization of any deficiencies in the application, registration statement or fee payment.

(2) REGISTRATION STATEMENT. Except as provided in sub. (3), a registration statement required under sub. (1) shall be signed and sworn to by 2 authorized officers, including the chief fiscal officer, of the charitable organization and shall include all of the following:

(a) The name of the charitable organization and the purpose for which it is organized.

(b) The address and telephone number of the charitable organization and the address and telephone number of any offices in this state or, if the charitable organization does not have an address, the name, address and telephone number of the person having custody of its financial records.

(c) The names and the addresses of the officers, directors and trustees and the principal salaried employees of the charitable organization.

(d) If required under sub. (3) (a), an annual financial report.

(e) If required under sub. (3) (b), an audited financial statement.

(f) A statement of whether the charitable organization is authorized by any other governmental authority to solicit.

(g) A statement of whether the charitable organization has ever had its authority to solicit denied, suspended, revoked or enjoined by a court or other governmental authority.

(h) The charitable purpose or purposes for which contributions will be used.

(i) The name or names under which it intends to solicit.

(j) The names of the persons within the charitable organization who have final responsibility for the custody of contributions.

(k) The names of the persons within the charitable organization who are responsible for the final distribution of contributions.

(L) If the registration statement is submitted to the department with an initial application for registration, all of the following:

1. A copy of the charitable organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument and bylaws.

2. A statement of the place where and the date when the charitable organization was legally established, the form of its organization and whether it has tax-exempt status.

3. Copies of any federal or state tax exemption determination letters received by the charitable organization.

(m) Any other information required by the department.

(3) ANNUAL FINANCIAL REPORT; AUDIT REQUIREMENT. (a) Except as provided in pars. (am) and (b) and in rules promulgated under sub. (8), a charitable organization that received contributions in excess of \$5,000 during its most recently completed fiscal year shall file with the department an annual financial report for the charitable organization's most recently completed fiscal year. The department shall prescribe the form of the report and shall prescribe standards for its completion. The annual financial report shall be filed within 6 months after the end of that fiscal year and shall include all of the following:

1. A balance sheet.

2. A statement of support, revenue, expenses and changes in fund balance.

3. A statement of functional expenses that, at a minimum, is divided into categories of management and general, program services and fund-raising.

4. Other financial information that the department requires.

(am) A charitable organization that operates solely within one community and that received less than \$50,000 in contributions during its most recently completed fiscal year may apply to the department for an exemption from the reporting requirement under par. (a). The department shall promulgate rules specifying the criteria for eligibility for an exemption under this paragraph, and shall grant exemptions from the reporting requirement under par. (a) to a charitable organization that satisfies those criteria.

(b) Except as provided in rules promulgated under sub. (8), in lieu of filing a report under par. (a), a charitable organization that received contributions in excess of \$100,000 during its most recently completed fiscal year shall file with the department an audited financial statement for the charitable organization's most recently completed fiscal year, prepared in accordance with generally accepted accounting principles, and the opinion of an independent certified public accountant on the financial statement. The audited financial statement shall be filed within 6 months after the end of that fiscal year.

(c) Except as provided in rules promulgated under sub. (8), a charitable organization that is registered under sub. (1) and that received \$5,000 or less in contributions during its most recently completed fiscal year shall file with the department an affidavit that the charitable organization received \$5,000 or less in contributions during that fiscal year. The affidavit shall be signed and sworn to by 2 authorized officers, including the chief fiscal officer, of the charitable organization and shall be filed within 6 months after the end of that fiscal year.

(4) ACCEPTANCE OF OTHER INFORMATION. The department may accept information filed by a charitable organization with another state or with the federal government instead of the information required to be included in a registration statement under sub. (2) if the information filed with the other state or with the federal government is substantially similar to the information required under this section.

(5) EXEMPTIONS FROM REGISTRATION. (a) The following are not required to register under sub. (1):

1. A person that is exempt from filing a federal annual information return under section 6033 (a) (2) (A) (i) and (iii) and (C) (i) of the internal revenue code.

2. A candidate for national, state or local office or a political party or other committee or group required to file financial information with the federal elections commission or a filing officer under s. 11.02.

3. Except as provided in par. (b) and in rules promulgated under sub. (8), a charitable organization which does not intend to raise or receive contributions in excess of \$5,000 during a fiscal year, if all of its functions, including solicitation, are performed by persons who are unpaid for their services and if no part of its assets or income inures to the benefit of, or is paid to, any officer or member of the charitable organization.



3m. A fraternal, civic, benevolent, patriotic or social organization that solicits contributions solely from its membership.

4. A veterans organization incorporated under ch. 188 or chartered under federal law or the service foundation of such an organization recognized in the bylaws of the organization.

5. An educational institution and its authorized charitable foundations which solicit contributions only from its students and their families, alumni, faculty, trustees, corporations, foundations and patients.

6. A person soliciting contributions for the relief of a named individual if all contributions, without any deductions, are given to the named individual.

7. A state agency, as defined in s. 20.001 (1), or a local governmental unit, as defined in s. 605.01 (1).

8. A private school, as defined in s. 118.165.

(b) Except as provided in rules promulgated under sub. (8), if a charitable organization would otherwise be exempt under par. (a) 3., but it raises or receives more than \$5,000 in contributions, it shall, within 30 days after the date on which its contributions exceed \$5,000, register as required under sub. (1).

(6) REPORTING TAX EXEMPTION OR ORGANIZATIONAL CHANGES. If a charitable organization registered under sub. (1) receives any federal or state tax exemption determination letter or adopts any amendment to its organizational instrument or bylaws after it is registered under sub. (1), within 30 days after receipt of the letter or adoption of the amendment, the charitable organization shall file with the department a copy of the letter or amendment.

(7) CONTRACTS. (a) Before a fund-raising counsel performs any material services for a charitable organization that is required to be registered under sub. (1), the charitable organization shall contract in writing with the fund-raising counsel, except as provided in par. (c). Requirements for the contract are specified in s. 440.43 (3).

(b) Before a professional fund-raiser performs any material services for a charitable organization that is required to be registered under sub. (1), the charitable organization shall contract in writing with the professional fund-raiser. Requirements for the contract are specified in s. 440.44 (4).

(c) Paragraph (a) does not apply if the fund-raising counsel is exempt under s. 440.43 (6) from contracting in writing with the charitable organization.

(8) CONTRIBUTION LIMITS. The department may promulgate rules that adjust the \$5,000 limit in subs. (3) (a) and (c) and (5) (a) 3. and (b) and the \$100,000 limit in sub. (3) (b).

History: 1991 a 278.

Complying With the Charitable Solicitations Act. Sweet & Petershack. Wis. Law Oct. 1993.

#### 440.43 Regulation of fund-raising counsel.

(1) ANNUAL REGISTRATION REQUIREMENT. (a) Except as provided in sub. (6), no fund-raising counsel may at any time have custody of contributions from a solicitation for a charitable organization that is required to be registered under s. 440.42 (1) unless the fund-raising counsel is registered with the department under this subsection.

(b) The department shall promptly register a fund-raising counsel that does all of the following:

1. Submits to the department an application for registration on a form provided by the department.

2. Files with the department a bond that is approved under sub. (2).

3. Pays to the department a \$50 registration fee.

(c) The department shall issue a certificate of registration to each fund-raising counsel that is registered under this subsection. Certificates issued under this paragraph expire on September 1. Renewal applications shall be submitted to the department, on a form provided by the department, on or before the date specified by the department and shall include a \$50 renewal fee and evi-

dence satisfactory to the department that the fund-raising counsel maintains a bond that is approved under sub. (2).

(d) Within 20 days after receiving an application for registration or for renewal of a registration under this subsection, the department shall notify the fund-raising counsel of any deficiencies in the application, bond or fee payment.

(2) BOND. At the time of applying for registration under sub. (1), the fund-raising counsel shall file with and have approved by the department a bond, in which the fund-raising counsel is the principal obligor, in the sum of \$20,000, with one or more responsible sureties whose liability in the aggregate as sureties at least equals that sum. The fund-raising counsel shall maintain the bond in effect as long as the registration is in effect. The bond, which may be in the form of a rider to a larger blanket liability bond, shall run to the state and to any person who may have a cause of action against the principal obligor of the bond for any liabilities resulting from the obligor's conduct of any activities as a fund-raising counsel or arising out of a violation of this subchapter or the rules promulgated under this subchapter.

(3) CONTRACT. Except as provided in sub. (6), before a fund-raising counsel performs any material services for a charitable organization that is required to be registered under s. 440.42 (1), the charitable organization and the fund-raising counsel shall contract in writing and the fund-raising counsel shall file the contract with the department. The contract shall contain information that will enable the department to identify the services that the fund-raising counsel is to provide, including whether the fund-raising counsel will at any time have custody of contributions.

(4) ACCOUNTS; DEPOSITS; RECORD KEEPING. (a) Within 90 days after services under a contract required under sub. (3) are completed, and on the anniversary of the signing of a contract lasting more than one year, the fund-raising counsel shall account in writing to the charitable organization with which the fund-raising counsel has contracted for all contributions received and expenses incurred under the contract. The charitable organization shall keep the accounting for at least 3 years after the date on which services under the contract are completed and make it available to the department upon request.

(b) The fund-raising counsel shall deposit, in its entirety, a contribution of money received by the fund-raising counsel in an account at a financial institution within 5 days after its receipt. The account shall be in the name of the charitable organization with which the fund-raising counsel has contracted. The charitable organization shall have sole control of all withdrawals from the account.

(c) The fund-raising counsel shall keep for the duration of a contract, and for not less than 3 years after its completion, all of the following:

1. A record of all contributions at any time in the custody of the fund-raising counsel, including the name and address of each contributor and the date and amount of the contribution.

2. A record of the location and account number of each financial institution account in which the fund-raising counsel deposits contributions.

(5) DEPARTMENT DISCLOSURE. The department shall not disclose information under sub. (4) (c) 1. except to the extent necessary for investigative or law enforcement purposes.

(6) EXCEPTIONS. This section does not apply to a fund-raising counsel who does not intend to earn more than \$1,000 per year as a fund-raising counsel, except that a fund-raising counsel who does not intend to earn more than \$1,000 but does earn more than \$1,000 in a year shall, beginning 30 days after actually earning more than \$1,000 in a year, comply with sub. (3) and, if the fund-raising counsel at any time has custody of contributions for a charitable organization that is required to be registered under s. 440.42 (1), register under sub. (1).

History: 1991 a 278.

**440.44 Regulation of professional fund-raisers.**

**(1) ANNUAL REGISTRATION REQUIREMENT** (a) No professional fund-raiser may solicit in this state for a charitable organization that is required to be registered under s. 440.42 (1) unless the professional fund-raiser is registered under this subsection.

(b) The department shall promptly register a professional fund-raiser that does all of the following:

1. Submits to the department an application for registration on a form provided by the department.
2. Files with the department a bond that is approved under sub. (2).
3. Pays to the department a \$50 registration fee.

(c) The department shall issue a certificate of registration to each professional fund-raiser that is registered under this subsection. Certificates issued under this paragraph expire on September 1. Renewal applications shall be submitted to the department, on a form provided by the department, on or before the date specified by the department and shall include a \$50 renewal fee and evidence satisfactory to the department that the professional fund-raiser maintains a bond that is approved under sub. (2).

(d) Within 20 days after receiving an application for registration or for renewal of a registration under this subsection, the department shall notify the professional fund-raiser of any deficiencies in the application, bond or fee payment.

**(2) BOND.** At the time of applying for registration under sub. (1), a professional fund-raiser shall file with and have approved by the department a bond, in which the professional fund-raiser is the principal obligor, in the sum of \$20,000, with one or more responsible sureties whose liability in the aggregate as sureties at least equals that sum. If a professional fund-raiser does not at any time have custody of any contributions, the bond shall be in the sum of \$5,000. The professional fund-raiser shall maintain the bond in effect as long as the registration is in effect. The bond, which may be in the form of a rider to a larger blanket liability bond, shall run to the state and to any person who may have a cause of action against the principal obligor of the bond for any liabilities resulting from the obligor's conduct of any activities as a professional fund-raiser or arising out of a violation of this subchapter or the rules promulgated under this subchapter.

**(3) SOLICITATION NOTICE** Before performing services under a contract with a charitable organization that is required to be registered under s. 440.42 (1), a professional fund-raiser shall file with the department a completed solicitation notice in the form prescribed by the department. The charitable organization on whose behalf the professional fund-raiser is acting shall file with the department a written confirmation that the solicitation notice and any accompanying material are true and complete to the best of its knowledge. The solicitation notice shall include all of the following:

- (a) A copy of the contract described in sub. (4).
- (b) The projected period during which the soliciting will take place.
- (c) The location and telephone number from which the soliciting will be conducted.
- (d) The name and residence address of each person responsible for directing and supervising the conduct of services under the contract described in sub. (4).
- (e) A statement of whether the professional fund-raiser will at any time have custody of contributions.
- (f) A full and fair description of the charitable purpose for which solicitations will be made.

**(4) CONTRACT.** (a) A professional fund-raiser and a charitable organization that is required to be registered under s. 440.42 (1) shall enter into a written contract that clearly states the respective obligations of the professional fund-raiser and the charitable organization and states the amount of gross revenue, raised under the contract, that the charitable organization will receive. The

amount of the gross revenue that the charitable organization will receive shall be expressed as a fixed percentage of the gross revenue or as an estimated percentage of the gross revenue, as provided in pars. (b) to (d).

(b) If the compensation received by the professional fund-raiser is contingent upon the amount of revenue received, the amount of the gross revenue that the charitable organization will receive shall be expressed as a fixed percentage of the gross revenue.

(c) If the compensation received by the professional fund-raiser is not contingent upon the amount of revenue received, the amount of the gross revenue that the charitable organization will receive shall be expressed as an estimated percentage of the gross revenue. The estimate shall be reasonable and the contract shall clearly disclose the assumptions upon which the estimate is based. The assumptions shall be based upon all of the relevant facts known to the professional fund-raiser regarding the solicitation to be conducted and upon the past performance of solicitations conducted by the professional fund-raiser. If the amount of the gross revenue that the charitable organization will receive is expressed as an estimated percentage of the gross revenue, the contract shall also guarantee that the charitable organization will receive a percentage of the gross revenue that is not less than the estimated percentage minus 10% of the gross revenue.

(d) The estimated or fixed percentage of the gross revenue that the charitable organization will receive excludes any amount which the charitable organization is to pay under the contract as expenses, including the cost of merchandise or services sold or events staged.

**(5) REPORTING CHANGES** Within 7 days after any material change occurs in information filed with the department under this section, the professional fund-raiser shall report the change, in writing, to the department.

**(7) FINANCIAL REPORT.** Within 90 days after completing services under a contract described in sub. (4), and on the anniversary of the signing of a contract described under sub. (4) lasting more than one year, the professional fund-raiser shall, if the charitable organization is required to be registered under s. 440.42 (1), account in writing to the charitable organization for all contributions received and all expenses incurred under the contract. The charitable organization shall retain the accounting for at least 3 years and make it available to the department upon request.

**(8) DEPOSITING CONTRIBUTIONS.** A professional fund-raiser shall deposit, in its entirety, a contribution of money received by the professional fund-raiser, on behalf of a charitable organization required to be registered under s. 440.42 (1), in an account at a financial institution within 5 days after its receipt. The account shall be in the name of the charitable organization. The charitable organization shall have sole control of all withdrawals from the account.

**(9) RECORD KEEPING.** (a) During the period in which a contract described in sub. (4) is in effect and for not less than 3 years after its completion, a professional fund-raiser shall retain all of the following records:

1. The name and, if known to the professional fund-raiser, the address of each person contributing and the date and amount of the contribution.
2. The name and residence address of each employee, agent or other person involved in the solicitation.
3. A record of all contributions that are at any time in the custody of the professional fund-raiser.
4. A record of all expenses incurred by the professional fund-raiser which the charitable organization is required to pay.
5. A record of the location and account number of each financial institution account in which the professional fund-raiser deposits contributions.

(b) If under a contract described in sub. (4) the professional fund-raiser sells tickets to an event and represents that the tickets

will be donated to an organization for use by others, the professional fund-raiser shall retain for the period specified in par. (a) all of the following:

1. The name and address of the donors and the number of tickets donated by each donor.
2. The name and address of the organization receiving donated tickets and the number of donated tickets received by the organization.

(c) The professional fund-raiser shall make all records described in this subsection available for inspection by the department upon request.

**(10) NONDISCLOSURE** The department may not disclose information under sub. (9) (a) 1. to any person except to the extent necessary for investigative or law enforcement purposes.

History: 1991 a. 278, 315.

**440.45 Charitable sales promotions.** If a commercial coventurer conducts a charitable sales promotion on behalf of a charitable organization that is required to be registered under s. 440.42 (1), the commercial coventurer shall disclose in each advertisement for the charitable sales promotion the dollar amount, or percentage of price, per unit of goods or services purchased or used that will benefit the charitable organization or charitable purpose. If the actual dollar amount or percentage cannot reasonably be determined on the date of the advertisement, the commercial coventurer shall disclose an estimated dollar amount or percentage. The estimate shall be based upon all of the relevant facts known to the commercial coventurer and to the charitable organization regarding the charitable sales promotion.

History: 1991 a. 278

**440.455 Solicitation disclosure requirements.**

**(1)** Except as provided in sub. (4), if a professional fund-raiser or unpaid solicitor solicits a contribution for a charitable organization that is required to be registered under s. 440.42 (1), the professional fund-raiser or unpaid solicitor shall, at the time of the solicitation or with a written confirmation of a solicitation, prior to accepting a contribution, make the following disclosures to the person from whom the contribution is solicited:

- (a) The name and location of the charitable organization.
- (b) That a financial statement of the charitable organization disclosing assets, liabilities, fund balances, revenue and expenses for the preceding fiscal year will be provided to the person upon request.
- (c) A clear description of the primary charitable purpose for which the solicitation is made.

**(2)** The financial statement under sub. (1) (b) shall, at a minimum, divide expenses into categories of management and general, program services and fund-raising. If the charitable organization is required to file an annual financial report under s. 440.42 (3) (a), the financial statement under sub. (1) (b) shall be consistent with that annual financial report.

**(3)** In addition to the requirements under subs. (1) and (2), except as provided in sub. (4), if a professional fund-raiser solicits on behalf of a charitable organization that is required to be registered under s. 440.42 (1), all of the following apply:

(a) If a solicitation is made orally, including a solicitation made by telephone, the professional fund-raiser shall send a written confirmation, within 5 days after the solicitation, to each person contributing or pledging to contribute. The written confirmation shall include a clear and conspicuous disclosure of the name of the professional fund-raiser and that the solicitation is being conducted by a professional fund-raiser.

(b) The professional fund-raiser may not represent that any part of the contributions received by the professional fund-raiser will be given or donated to a charitable organization unless that charitable organization has, prior to the solicitation, consented in writing, signed by 2 authorized officers, directors or trustees of that other charitable organization, to the use of its name.

(c) The professional fund-raiser may not represent that tickets to an event will be donated to an organization for use by others unless all of the following conditions are met:

1. The professional fund-raiser has a commitment, in writing, from the organization stating that the organization will accept donated tickets and specifying the number of donated tickets that the organization is willing to accept.

2. The professional fund-raiser solicits contributions for donated tickets from no more contributors than the number of tickets that the organization has agreed to accept under subd. 1.

**(4)** A charitable organization that operates solely within one community and that received less than \$50,000 in contributions during its most recently completed fiscal year may apply to the department for an exemption from the disclosure requirements under this section. The department shall promulgate rules specifying the criteria for eligibility for an exemption under this paragraph, and shall grant exemptions from the disclosure requirements under this section to a charitable organization that satisfies those criteria.

History: 1991 a. 278, 315.

**440.46 Prohibited acts. (1)** No person may, in the planning, management or execution of a solicitation or charitable sales promotion, do any of the following:

- (a) Use an unfair or deceptive act or practice.
- (b) Imply that a contribution is for or on behalf of a charitable organization or use any emblem, device or printed matter belonging to or associated with a charitable organization without first being authorized in writing to do so by the charitable organization.
- (c) Use a name, symbol or statement so closely related or similar to that used by another charitable organization that the use of the name, symbol or statement would tend to confuse or mislead a person being solicited.
- (d) Represent or lead anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of the solicitation or charitable sales promotion will be used for charitable purposes if that is not the fact.
- (e) Lead anyone in any manner to believe that another person sponsors, endorses or approves a solicitation or charitable sales promotion if the other person has not sponsored, endorsed or approved the solicitation or charitable sales promotion in writing.
- (f) Use the fact of registration to lead any person to believe that the registration constitutes an endorsement or approval by the state.
- (g) Represent directly or by implication that a charitable organization will receive a fixed or estimated percentage of the gross revenue raised greater than that established under s. 440.44 (4).

**(2)** In deciding whether an act or practice is unfair or deceptive within the meaning of sub. (1) (a), definitions, standards and interpretations relating to unfair or deceptive acts or practices under chs. 421 to 427 apply.

History: 1991 a. 278.

**440.47 Administration and investigations. (1) PUBLIC RECORDS:** Except as provided in ss. 440.43 (5) and 440.44 (10), registration statements, applications, reports, contracts and agreements of charitable organizations, fund-raising counsel, professional fund-raisers and unpaid solicitors and all other documents and information retained by or filed with the department under this subchapter are available for inspection or copying under s. 19.35 (1).

**(2) FISCAL RECORDS; INSPECTION; RETENTION.** All charitable organizations, fund-raising counsels, professional fund-raisers and unpaid solicitors shall keep true records concerning activities regulated by this subchapter in a form that will enable them accurately to provide the information required by this subchapter.

Upon demand, those records shall be made available to the department for inspection and copying. The records shall be retained by the charitable organization, fund-raising counsel, professional

History: 1991 a. 278.

fund-raiser or unpaid solicitor for at least 3 years after the end of the fiscal year to which they relate.

(3) **EXCHANGE OF INFORMATION** The department may exchange with the appropriate authority of any other state or of the United States information with respect to charitable organizations, fund-raising counsel, professional fund-raisers, unpaid solicitors and commercial coventurers.

(4) **EXAMINATION OF DOCUMENTS AND WITNESSES** (a) If the department or the department of justice has reason to believe a person has violated or is violating this subchapter or the rules promulgated under this subchapter, it may conduct an investigation to determine whether the person has violated or is violating those provisions. The department of justice may subpoena persons and require the production of books and other documents to aid in its investigations of alleged violations of this subchapter.

(b) A person upon whom a notice of the taking of testimony or examination of documents is served under this subsection shall comply with the terms of the notice unless otherwise provided by the order of a court of this state.

(c) The department of justice may file in the circuit court for the county in which a person resides or in which the person's principal place of business is located, or in the circuit court for Dane county if the person is a nonresident or has no principal place of business in this state, and serve upon the person, a petition for an order of the court for the enforcement of this subsection. Disobedience of a final order entered under this paragraph by a court is punishable as a contempt of court under ch. 785.

(5) **SUBSTITUTE SERVICE UPON SECRETARY OF STATE** A charitable organization, fund-raising counsel, professional fund-raiser or commercial coventurer that has its principal place of business outside of this state or is organized under laws other than the laws of this state and that is subject to this subchapter shall be considered to have irrevocably appointed the secretary of state as its agent for the service of process or notice directed to the charitable organization, fund-raising counsel, professional fund-raiser or commercial coventurer or to any of its partners, principal officers or directors in an action or proceeding brought under this subchapter. Service of process or notice upon the secretary of state shall be made by personally delivering to and leaving with the secretary of state a copy of the process or notice. That service shall be sufficient service if the secretary of state immediately sends notice of the service and a copy of the process or notice to the charitable organization, fund-raising counsel, professional fund-raiser, commercial coventurer or other person to whom it is directed by registered mail, with return receipt requested, at the last address known to the secretary of state.

History: 1991 a 278.

**440.475 Disciplinary actions.** (1) The department may deny, limit, suspend or revoke the registration of a charitable organization, fund-raising counsel or professional fund-raiser, or may reprimand a charitable organization, fund-raising counsel or professional fund-raiser that is registered under this subchapter, if the department finds that the charitable organization, fund-raising counsel or professional fund-raiser has made a false statement in any registration statement, annual report or other information required to be filed under, or has otherwise violated, this subchapter or the rules promulgated under this subchapter.

(2) In addition to or in lieu of a reprimand or a denial, limitation, suspension or revocation of a certificate under sub. (1), the department may assess against any person who violates this subchapter or the rules promulgated under this subchapter a forfeiture of not less than \$100 nor more than \$1,000 for each violation.

History: 1991 a 278.

**440.48 Penalties and enforcement.** (1) (a) The department of justice may bring an action to prosecute a violation of this subchapter or the rules promulgated under this subchapter, including an action for temporary or permanent injunction.

(b) Upon finding that a person has violated this subchapter or the rules promulgated under this subchapter, the court may make any necessary order or judgment, including but not limited to injunctions, restitution and, notwithstanding s. 814.04, award of reasonable attorney fees and costs of investigation and litigation, and, except as provided in par. (c), may impose a forfeiture of not less than \$100 nor more than \$10,000 for each violation.

(c) 1. A person who violates s. 440.47 (4) (b) may be required to forfeit not more than \$5,000, unless the person establishes reasonable cause for the violation.

2. A person who, with intent to avoid, prevent or interfere with a civil investigation under this subsection, does any of the following may be required to forfeit not more than \$5,000:

a. Alters or by any other means falsifies, removes from any place, conceals, withholds, destroys or mutilates any documentary material in the possession, custody or control of a person subject to notice of the taking of testimony or examination of documents under s. 440.47 (4).

b. Knowingly conceals relevant information.

(d) A charitable organization, fund-raising counsel, professional fund-raiser, commercial coventurer or any other person who violates the terms of an injunction or other order entered under this subsection may be required to forfeit, in addition to all other remedies, not less than \$1,000 nor more than \$10,000 for each violation. The department of justice may recover the forfeiture in a civil action. Each separate violation of an order entered under this subsection is a separate offense, except that each day of a violation through continuing failure to obey an order is a separate offense.

(e) No charitable organization may indemnify an officer, employe or director for any costs, fees, restitution or forfeitures assessed against that individual by the court under par. (b), (c) or (d) unless the court determines that the individual acted in good faith and reasonably believed the conduct was in or not opposed to the best interests of the charitable organization.

(2) The department or the department of justice may accept a written assurance of discontinuance of any act or practice alleged to be a violation of this subchapter or the rules promulgated under this subchapter from the person who has engaged in the act or practice. The assurance may, among other terms, include a stipulation for the voluntary payment by the person of the costs of investigation, or of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved persons, or both. The department or department of justice may at any time reopen a matter in which an assurance of discontinuance is accepted for further proceedings if the department or department of justice determines that reopening the matter is in the public interest.

History: 1991 a 278.

## SUBCHAPTER IV

### PEDDLERS

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

tle a blind person to peddle for hire for another person. A license issued under this section is permanent unless suspended or revoked by the department.

History: 1977 c. 399; 1989 a. 56; 1991 a. 39

## SUBCHAPTER V

### BARBERING AND COSMETOLOGY SCHOOLS

**440.60 Definitions.** As used in this subchapter unless the context requires otherwise:

- (1) "Aesthetician" has the meaning specified in s. 454.01 (1).
- (2) "Aesthetics" has the meaning specified in s. 454.01 (2).
- (3) "Apprentice" has the meaning specified in s. 454.01 (3).
- (4) "Barbering or cosmetology" has the meaning specified in s. 454.01 (5).
- (5) "Barber or cosmetologist" has the meaning specified in s. 454.01 (6).
- (6) "Electrologist" has the meaning specified in s. 454.01 (8).
- (7) "Electrology" has the meaning specified in s. 454.01 (9).
- (8) "Establishment" has the meaning specified in s. 454.01 (10).
- (9) "Examining board" has the meaning specified in s. 454.01 (11).
- (10) "Manager" has the meaning specified in s. 454.01 (12).
- (11) "Manicuring" has the meaning specified in s. 454.01 (13).
- (12) "Manicurist" has the meaning specified in s. 454.01 (14).
- (13) "Practical instruction" means training through action or direct contact with a patron or model other than a mannequin.
- (14) "School" means any facility, other than a specialty school, that offers instruction in barbering or cosmetology, aesthetics, electrology or manicuring.
- (15) "Specialty school" means an establishment that offers instruction in aesthetics, electrology or manicuring.
- (16) "Student" has the meaning specified in s. 454.01 (15).
- (17) "Theoretical instruction" means training through the study of principles and methods.
- (18) "Training hour" has the meaning specified in s. 454.01 (16).

History: 1987 a. 265

**440.61 Applicability.** This subchapter does not apply to any of the following:

- (1) Schools regulated or approved by the technical college system board.
- (2) Schools operated by the department of health and social services.

History: 1987 a. 265; 1989 a. 31, 107; 1993 a. 399

### 440.62 School and specialty school licensure.

**(1) LICENSE REQUIRED** (a) No person may operate a school unless the school holds a current license as a school of barbering or cosmetology, aesthetics, electrology or manicuring issued by the department.

(b) No person may operate a specialty school unless the specialty school holds a current license as a specialty school of aesthetics, electrology or manicuring issued by the department.

(c) No school may use the title "school of barbering or cosmetology" or any similar title unless the school holds a current school of barbering or cosmetology license issued by the department.

(d) No school may use the title "school of aesthetics" or any similar title unless the school holds a current school of aesthetics license issued by the department.

(e) No school may use the title "school of electrology" or any similar title unless the school holds a current school of electrology license issued by the department.

(f) No school may use the title "school of manicuring" or any similar title unless the school holds a current school of manicuring license issued by the department.

(g) No specialty school may use the title "specialty school of aesthetics" or any similar title unless the specialty school holds a current specialty school of aesthetics license issued by the department.

(h) No specialty school may use the title "specialty school of electrology" or any similar title unless the specialty school holds a current specialty school of electrology license issued by the department.

(i) No specialty school may use the title "specialty school of manicuring" or any similar title unless the specialty school holds a current specialty school of manicuring license issued by the department.

**(2) APPLICATIONS; LICENSE PERIOD; CHANGE OF OWNERSHIP.** (a) An application for initial licensure or renewal or reinstatement of a license under this section shall be submitted to the department on a form provided by the department and shall be accompanied by the applicable fee specified in s. 440.05 (1) or 440.08. Each application shall be accompanied by a surety bond acceptable to the department in the minimum sum of \$25,000 for each location.

(b) The department may require additional information to be submitted to accompany or supplement an application if the department determines that the information is necessary to evaluate whether the school or specialty school meets the requirements in this subchapter.

(c) The department may require a school or specialty school to submit with an application a current balance sheet and income statement audited and certified by an independent auditor or certified public accountant. If the department receives a request to inspect a balance sheet, income statement or audit report, the department shall, before permitting an inspection, require the person requesting inspection to provide his or her full name and, if the person is representing another person, the full name and address of that person. Within 48 hours after permitting an inspection, the department shall mail to the person who submitted the balance sheet, income statement or audit report a notification that states the full name and address of the person who inspected the document and the full name and address of any person represented by the person who inspected the document. This paragraph does not apply to inspection requests made by state or federal officers, agents or employees which are necessary to the discharge of the duties of their respective offices.

(d) Any change of ownership shall be reported to the department by the new owner within 5 days after the change of ownership. A change of ownership shall be submitted to the department on a form provided by the department and shall be accompanied by the change of ownership fee specified by the department by rule.

(e) The department shall promulgate rules establishing the requirements for surety bonds under par. (a).

**(3) SCHOOL LICENSES.** (a) *School of barbering or cosmetology license.* The department shall issue a school of barbering or cosmetology license to each school that meets the following requirements:

1. Satisfies the conditions in sub. (2).
2. Requires as a prerequisite to graduation completion of a course of instruction in barbering or cosmetology of at least 1,800 training hours in not less than 10 months. The course of instruction may not exceed 8 training hours in any one day for any student or 48 hours in any one week for any student.
3. If the school offers a course of theoretical instruction for managers, requires as a prerequisite to completion of the course of instruction for managers the completion of at least 150 training hours.
4. If the school offers a course of theoretical instruction for apprentices, requires as a prerequisite to completion of the course

of instruction for apprentices the completion of at least 288 training hours in not less than 9 weeks and not more than 2 years.

5. If the school offers a course of instruction in aesthetics, the course of instruction satisfies the requirements under par. (b) 2.

6. If the school offers a course of instruction in electrology, the course of instruction satisfies the requirements under par. (c) 2.

7. If the school offers a course of instruction in manicuring, the course of instruction satisfies the requirements under par. (d) 2.

8. Satisfies the requirements for schools of barbering or cosmetology established in rules promulgated under subs. (2) (e) and (5) (b) and s. 440.64 (1) (b).

(b) *School of aesthetics license.* The department shall issue a school of aesthetics license to each school that meets the following requirements:

1. Satisfies the conditions in sub. (2).

2. Requires as a prerequisite to graduation completion of a course of instruction in aesthetics of at least 450 training hours in not less than 11 weeks and not more than 30 weeks.

3. Satisfies the requirements for schools of aesthetics established in rules promulgated under subs. (2) (e) and (5) (b) and s. 440.64 (1) (b).

(c) *School of electrology license.* The department shall issue a school of electrology license to each school that meets the following requirements:

1. Satisfies the conditions in sub. (2).

2. Requires as a prerequisite to graduation completion of a course of instruction in electrology of at least 450 training hours in not less than 11 weeks and not more than 30 weeks.

3. Satisfies the requirements for schools of electrology established in rules promulgated under subs. (2) (e) and (5) (b) and s. 440.64 (1) (b).

(d) *School of manicuring license.* The department shall issue a school of manicuring license to each school that meets the following requirements:

1. Satisfies the conditions in sub. (2).

2. Requires as a prerequisite to graduation completion of a course of instruction in manicuring of at least 300 training hours in not less than 7 weeks and not more than 20 weeks.

3. Satisfies the requirements for schools of manicuring established in rules promulgated under subs. (2) (e) and (5) (b) and s. 440.64 (1) (b).

(4) **SPECIALTY SCHOOL LICENSES.** (a) *Specialty school of aesthetics license.* The department shall issue a specialty school of aesthetics license to each specialty school that meets the following requirements:

1. Satisfies the conditions in sub. (2).

2. Requires as a prerequisite to graduation completion of a course of instruction in aesthetics of at least 450 training hours in not less than 11 weeks and not more than 30 weeks.

3. Satisfies the requirements for specialty schools of aesthetics established in rules promulgated under subs. (2) (e) and (5) (b) and s. 440.64 (1) (b).

(b) *Specialty school of electrology license.* The department shall issue a specialty school of electrology license to each specialty school that meets the following requirements:

1. Satisfies the conditions in sub. (2).

2. Requires as a prerequisite to graduation completion of a course of instruction in electrology of at least 450 training hours in not less than 11 weeks and not more than 30 weeks.

3. Satisfies the requirements for specialty schools of electrology established in rules promulgated under subs. (2) (e) and (5) (b) and s. 440.64 (1) (b).

(c) *Specialty school of manicuring license.* The department shall issue a specialty school of manicuring license to each specialty school that meets the following requirements:

1. Satisfies the conditions in sub. (2).

2. Requires as a prerequisite to graduation completion of a course of instruction in manicuring of at least 300 training hours in not less than 7 weeks and not more than 20 weeks.

3. Satisfies the requirements for specialty schools of manicuring established in rules promulgated under subs. (2) (e) and (5) (b) and s. 440.64 (1) (b).

(5) **REQUIREMENTS FOR COURSES OF INSTRUCTION.** (a) No specialty school may offer theoretical instruction for managers or apprentices.

(b) The examining board shall promulgate rules prescribing the subjects required to be included in courses of instruction and establishing minimum standards for courses of instruction and instructional materials and equipment at schools and specialty schools.

History: 1987 a 265; 1991 a 39

**440.63 Persons providing practical instruction in schools.** (1) **INSTRUCTOR CERTIFICATION REQUIRED.** (a) No person may provide practical instruction in barbering or cosmetology in a school of barbering or cosmetology unless the person holds a current barbering or cosmetology instructor certificate issued by the department, except as follows:

1. A person may provide practical instruction in aesthetics in a school of barbering or cosmetology if the person holds a current aesthetics instructor certificate issued by the department.

2. A person may provide practical instruction in manicuring in a school of barbering or cosmetology if the person holds a current manicuring instructor certificate issued by the department.

(b) No person may provide practical instruction in a school of aesthetics unless the person holds a current barbering or cosmetology instructor or aesthetics instructor certificate by the department.

(c) No person may provide practical instruction in electrology in a school of barbering or cosmetology or school of electrology unless the person holds a current electrology instructor certificate issued by the department.

(d) No person may provide practical instruction in a school of manicuring unless the person holds a current barbering or cosmetology instructor or manicuring instructor certificate issued by the department.

(2) **APPLICATIONS; CERTIFICATION PERIOD.** An application for initial certification or renewal or reinstatement of a certificate under this section shall be submitted to the department on a form provided by the department. An application for initial certification shall include the fee specified in s. 440.05 (1). Renewal applications shall be submitted to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include the applicable renewal fee specified under s. 440.08 (2) (a), and the applicable penalty for late renewal under s. 440.08 (3) if the application is submitted late.

(3) **INSTRUCTOR CERTIFICATIONS.** (a) *Barbering or cosmetology instructor certification.* The department shall issue a barbering or cosmetology instructor certificate to each person who meets the following requirements:

1. Satisfies the conditions in sub. (2).

2. Completes 2,000 hours of practice as a licensed barber or cosmetologist or holds a current manager license issued by the examining board.

3. Completes 150 training hours of instructor training approved by the department.

4. Passes an examination conducted by the department to determine fitness as a barbering or cosmetology instructor.

(b) *Aesthetics instructor certification.* The department shall issue an aesthetics instructor certificate to each person who meets the following requirements:

1. Satisfies the conditions in sub. (2).

2. Completes 2,000 hours of practice as a licensed aesthetician and 150 training hours of instructor training approved by the department.

3. Passes an examination conducted by the department to determine fitness as an aesthetics instructor.

(c) *Electrology instructor certification.* The department shall issue an electrology instructor certificate to each person who meets the following requirements:

1. Satisfies the conditions in sub. (2).

2. Completes 2,000 hours of practice as a licensed electrologist and 150 training hours of instructor training approved by the department.

3. Passes an examination conducted by the department to determine fitness as an electrology instructor.

(d) *Manicuring instructor certification.* The department shall issue a manicuring instructor certificate to each person who meets the following requirements:

1. Satisfies the conditions in sub. (2).

2. Completes 2,000 hours of practice as a licensed manicurist and 150 training hours of instructor training approved by the department.

3. Passes an examination conducted by the department to determine fitness as a manicuring instructor.

History: 1987 a 265; 1989 a 31; 1991 a 39

**440.635 Persons providing practical instruction in specialty schools.** (1) No person may provide practical instruction in a specialty school of aesthetics unless the person holds a current manager license issued by the examining board or a current barbering or cosmetology instructor or aesthetics instructor certificate issued by the department.

(2) No person may provide practical instruction in a specialty school of electrology unless the person holds a current electrologist license and a current manager license issued by the examining board or an electrology instructor certificate issued by the department.

(3) No person may provide practical instruction in a specialty school of manicuring unless the person holds a current manager license issued by the examining board or a current barbering or cosmetology instructor or manicuring instructor certificate issued by the department.

History: 1987 a 265.

**440.64 Regulation of schools and specialty schools.** (1) **DUTIES OF DEPARTMENT** (a) The department shall investigate the adequacy of the courses of instruction and instructional materials and equipment at schools and specialty schools and review those courses of instruction, instructional materials and equipment for compliance with minimum standards established by rules of the examining board.

(b) The department shall promulgate rules:

1. Establishing standards and criteria to prevent fraud and misrepresentation in the sale and advertising of courses and courses of instruction.

2. Regulating the negotiability of promissory instruments received by schools and specialty schools in payment of tuition and other charges.

3. Establishing minimum standards for the refund of portions of tuition, fees and other charges if a student does not enter a course or course of instruction or withdraws or is discontinued from a course or course of instruction.

4. Requiring schools and specialty schools to furnish information to the department concerning their facilities, curricula, instructors, registration and enrollment policies, enrollment rosters, student training hours, contracts, financial records, tuition and other charges and fees, refund policies and policies concerning the negotiability of promissory instruments received in payment of tuition and other charges.

(2) **AUDITORS AND INSPECTORS** (a) The department shall appoint auditors and inspectors under the classified service to audit and inspect schools and specialty schools.

(b) An auditor or inspector appointed under par. (a) may enter and audit or inspect any school or specialty school at any time during business hours.

(3) **INVESTIGATIONS, HEARINGS, REPRIMANDS, DENIALS, LIMITATIONS, SUSPENSIONS AND REVOCATIONS** (a) Subject to the rules promulgated under s. 440.03 (1), the department may make investigations or conduct hearings to determine whether a violation of this subchapter or any rule promulgated under this subchapter has occurred.

(b) Subject to the rules promulgated under s. 440.03 (1), the department may reprimand a licensee or certified instructor or deny, limit, suspend or revoke a license or certificate under this subchapter if it finds that the applicant, licensee or certified instructor has done any of the following:

1. Made a material misstatement in an application for licensure, certification or renewal.

2. Advertised in a manner which is false, deceptive or misleading.

3. Violated this subchapter or any rule promulgated under this subchapter.

(c) In addition to or in lieu of a reprimand or denial, limitation, suspension or revocation of a license or certificate under par. (b), the department may assess against a school, specialty school or instructor a forfeiture of not less than \$100 nor more than \$5,000 for each violation enumerated under par. (b).

History: 1987 a 265.

## SUBCHAPTER VI

### MORTGAGE BANKERS, LOAN ORIGINATORS AND LOAN SOLICITORS

**440.71 Definitions.** In this subchapter:

(1g) "Loan" means a loan secured by a lien or mortgage, or equivalent security interest, on real property.

(1r) (a) "Loan originator" means a person who is not excluded by par. (b) and who, on behalf of a mortgage banker, finds a loan or negotiates a land contract, loan or commitment for a loan.

(b) "Loan originator" does not include any of the following:

1. The Wisconsin housing and economic development authority, or a bank, trust company, savings bank, savings and loan association, insurance company, or a land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

2. A credit union which negotiates loans or any licensee under ch. 138 which negotiates loans or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan.

3. Employees of persons described in subs. 1. and 2. if the employe is performing his or her duties as an employe.

4. A landlord who, in connection with leasing real property, makes a loan to a tenant that is secured by leasehold improvements that are fixtures or improvements to real property.

5. An employe or agent of persons described in subd. 4. if the employe or agent is performing his or her duties in making leasehold improvement loans in connection with leasing real property.

(2) (a) "Loan solicitor" means a person who is not excluded by par. (b) and who, on behalf of a loan applicant or an investor and for commission, money or other thing of value, finds a loan or negotiates a land contract, loan or commitment for a loan.

(b) "Loan solicitor" does not include any of the following:

1. The Wisconsin housing and economic development authority, or a bank, trust company, savings bank, savings and loan association, insurance company, or a land mortgage or farm

loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

2. A credit union which negotiates loans or any licensee under ch. 138 which negotiates loans or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan.

3. Employes of persons described in subds. 1. and 2. if the employe is performing his or her duties as an employe.

(3) (a) "Mortgage banker" means a person who is not excluded by par. (b) and who does any of the following:

1. Originates loans for itself, as payee on the note evidencing the loan, or for another person.

2. Sells loans or interests in loans to another person.

3. Services loans or land contracts or provides escrow services, for another person and for commission, money or other thing of value.

(b) "Mortgage banker" does not include any of the following:

1. The Wisconsin housing and economic development authority, or a bank, trust company, savings bank, savings and loan association, insurance company, or a land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

2. A credit union which negotiates loans or any licensee under ch. 138 which negotiates loans or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan.

3. Employes of persons described in subds. 1. and 2. if the employe is performing his or her duties as an employe.

4. A landlord who, in connection with leasing real property, makes a loan to a tenant that is secured by leasehold improvements that are fixtures or improvements to real property.

5. An employe or agent of persons described in subd. 4. if the employe or agent is performing his or her duties in making leasehold improvement loans in connection with leasing real property.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.71; 1989 a. 45.

Wisconsin's new mortgage banking law Thompson. Wis. Law. March 1989.

#### 440.72 Registration of mortgage bankers, loan originators and loan solicitors. (1) DEFINITIONS. In this section:

(a) "Net worth" means total tangible assets less total liabilities of a person, or, if the person is a natural person, total tangible assets less total liabilities exclusive of the person's principal residence and its furnishings and personal use vehicles.

(b) "Warehouse line of credit" means a line of credit to fund loans held for sale to other persons.

(1m) REGISTRATION REQUIRED. A person may not act as a mortgage banker, loan originator or loan solicitor, use the title "mortgage banker", "loan originator" or "loan solicitor", or advertise or otherwise portray himself or herself as a mortgage banker, loan originator or loan solicitor, unless the person has been issued a certificate of registration from the department.

(2) APPLYING FOR REGISTRATION. A person desiring to act as a mortgage banker, loan originator or loan solicitor shall apply for a certificate of registration to the department on forms prescribed by the department and shall pay the fee specified under s. 440.05 (1). An application shall satisfy all of the following:

(a) *Verified.* The applicant shall verify the application, and if the applicant is a partnership, limited liability company or corporation, the application shall be verified as follows:

1. By at least 2 partners of the partnership.

2. By at least 2 officers of the corporation who have authority to verify the application.

3. By at least 2 members of the limited liability company.

(b) *Identity of partner, member or officer.* If the applicant is a partnership, limited liability company or corporation, the applica-

tion shall identify each partner, member or officer who will use the title "mortgage banker", "loan originator" or "loan solicitor".

(3) ADDITIONAL REQUIREMENT FOR LOAN ORIGINATOR APPLICANT. In addition to the requirements of sub. (2), an applicant for registration as a loan originator shall include in the application the name of the mortgage banker who will employ the loan originator.

(4) ADDITIONAL REQUIREMENT FOR MORTGAGE BANKER APPLICANT. In addition to the requirements of sub. (2), an applicant for registration as a mortgage banker shall do one of the following:

(a) *Approval by federal agency.* Submit evidence which shows, to the department's satisfaction, that the federal department of housing and urban development has approved the applicant as a mortgagee.

(b) *File a bond.* File with the department a bond which is in the amount of \$25,000, is furnished by a company authorized to do business in this state and is approved by the department.

(c) *Minimum net worth.* Submit evidence that establishes, to the department's satisfaction, a minimum net worth of \$25,000 and a warehouse line of credit of not less than \$250,000 or a minimum net worth of \$100,000.

(5) COMPLETION OF REGISTRATION. (a) *Loan originator and loan solicitor.* Upon receiving a properly completed application for registration as a loan originator or loan solicitor and the fee specified in s. 440.05 (1), the department shall issue to the applicant a certificate of registration as a loan originator or loan solicitor.

(b) *Mortgage banker.* 1. Upon receiving a properly completed application for registration as a mortgage banker, the fee specified in s. 440.05 (6) and satisfactory evidence of compliance with sub. (4), the department shall issue to the applicant a temporary certificate of registration as a mortgage banker. A temporary certificate of registration is valid for 6 months after the date of issuance.

2. If within 6 months after the date of issuance of a temporary certificate of registration under subd. 1. the holder of the temporary certificate of registration notifies the department that he or she is acting as a mortgage banker and pays to the department the fee specified in s. 440.05 (1), the department shall issue to the person a certificate of registration as a mortgage banker.

(7) RENEWAL OF REGISTRATION. A loan originator, loan solicitor or mortgage banker shall renew a certificate of registration by submitting to the department a renewal application and the applicable renewal fee specified under s. 440.08 (2) (a) on or before the applicable renewal date specified under s. 440.08 (2) (a). An applicant for renewal of a certificate of registration as a mortgage banker shall, as part of the application, refile a bond that satisfies sub. (4) (b) or resubmit evidence that satisfies sub. (4) (a) or (c).

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.72; 1989 a. 45; 1991 a. 39; 1993 a. 112.

#### 440.73 Relationship between loan originator and mortgage banker. (1) RESPONSIBILITY FOR LOAN ORIGINATOR.

A mortgage banker is responsible for, and shall supervise the acts of, a loan originator who registers under s. 440.72 (3) as an employe of the mortgage banker or a loan originator or any other person who otherwise acts on behalf of the mortgage banker.

(2) RESTRICTION ON LOAN ORIGINATOR. If the department suspends or revokes a mortgage banker's certificate of registration, a loan originator may not act on behalf of that mortgage banker during the period of suspension or revocation.

(3) TRANSFER BY LOAN ORIGINATOR. A registered loan originator may at any time apply, on forms prescribed and provided by the department, to transfer employment to another registered mortgage banker. The fee for transfer is specified under s. 440.05 (7) and is payable when the loan originator files the application.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.73; 1991 a. 39.

#### 440.74 Department's review of the operations of a loan solicitor, loan originator or mortgage banker.

(1) AUDIT OF MORTGAGE BANKER'S OR LOAN SOLICITOR'S OPERA-



TIONS. A mortgage banker or loan solicitor shall submit a copy of an annual audit of the mortgage banker's or loan solicitor's operations to the department within 20 days after the audit is completed.

(2) **EXAMINATION** (a) *Conduct of examination and preparation of report.* The department may at any time, on its own motion or upon complaint, examine the books of account, records, condition and affairs of a mortgage banker, loan originator or loan solicitor registered under this subchapter. The department shall prepare a report of each examination conducted under this section. As part of the examination or preparation of the report, the department may examine under oath any of the members, officers, directors, agents, employees or customers of the mortgage banker, loan originator or loan solicitor. The department may require a mortgage banker, loan originator or loan solicitor who is examined under this paragraph to pay to the department a fee for the costs of conducting the examination. If the department requires a fee under this paragraph, the department shall establish the amount of the fee by rule.

(b) *Confidentiality.* Examination reports and correspondence regarding the reports are confidential, except that the secretary may release examination reports and correspondence in connection with a disciplinary proceeding conducted by the department, a liquidation proceeding or a criminal investigation or proceeding.  
History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.74; 1991 a. 39

**440.75 Record-keeping requirements for mortgage bankers and loan solicitors.** (1) **REQUIRED RECORDS; LOAN DOCUMENTS** (a) *Fee record system.* A mortgage banker or loan solicitor shall establish and maintain a record system which shows all fees which a mortgage banker charged a mortgage loan applicant and the application or disposition of those fees.

(b) *Loan application record system.* A mortgage banker or loan solicitor shall establish and maintain a record system containing all of the following information for each mortgage loan application:

1. The application date.
2. The name of the applicant.
3. The address of the property to be mortgaged.
4. The disposition of the application and the reason for the particular disposition.
5. The type of loan.

(c) *Loan application documents.* A mortgage banker or loan solicitor shall maintain for each mortgage loan application all of the following documents, if used by the mortgage banker or loan solicitor in connection with the mortgage loan application file:

1. The completed loan application.
2. The loan commitment.
3. The disclosure statement required by 15 USC 1601 to 1693r and regulations adopted under that law.
4. The loan closing statement.
5. A copy of the mortgage note or bond.
6. A copy of the letter rejecting the application.
7. The appraisal report.
8. The credit report.
9. Any other documents, records or forms shown to or signed by a loan applicant.

(2) **PERIOD OF RECORD RETENTION** A mortgage banker or loan solicitor shall keep for at least 25 months copies of all deposit receipts, canceled checks, trust account records, the records which a mortgage banker or loan solicitor maintains under sub. (1) (c) and other relevant documents or correspondence received or prepared by the mortgage banker or loan solicitor in connection with a loan or loan application. The retention period begins on the date the loan is closed or, if the loan is not closed, the date of loan application. The mortgage banker or loan solicitor shall make the records available for inspection and copying by the department. If the records are not kept within this state, the mortgage banker or loan solicitor shall, upon request of the department, promptly

send exact and complete copies of requested records to the department.

(3) **CONTENTS OF CREDIT AND APPRAISAL REPORTS.** (a) *Credit report.* If a mortgage banker or loan solicitor charges a loan applicant a separate fee for a credit report, the credit report shall consist, at a minimum, of a written statement indicating the name of the credit reporting agency which investigated the credit history of the applicant.

(b) *Appraisal report.* If a mortgage banker or loan solicitor charges a loan applicant a separate fee for an appraisal report, the appraisal report shall consist, at a minimum, of a written statement indicating the appraiser's opinion of the value of the property appraised for mortgage loan purposes, the basis for that opinion and the name of the person who conducted the appraisal.

(4) **RESPONSIBILITY FOR FORMS** A mortgage banker or loan solicitor is responsible for the preparation and correctness of all entries on forms, documents and records which are under the mortgage banker's or loan solicitor's control and which are not dependent on information provided by the loan applicant or a 3rd party.

(5) **ACCOUNTING PRACTICES** A mortgage banker or loan solicitor shall maintain its books and records in accordance with generally accepted accounting principles.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.75

**440.76 Mortgage banker, loan originator and loan solicitor trust accounts.** A mortgage banker, loan originator or loan solicitor shall deposit in one or more trust accounts all funds other than nonrefundable fees which it receives on behalf of any person, pending disbursement of the funds in accordance with instructions from the person on whose behalf the funds are deposited. A mortgage banker or loan solicitor may maintain trust accounts in a bank, savings bank, savings and loan association or credit union which is authorized to do business in this state or which is federally chartered. The mortgage banker or loan solicitor shall notify the department of the location of its trust accounts and shall authorize the department to examine and audit any trust account as the department considers it necessary.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.76

**440.77 Discipline of mortgage bankers, loan originators and loan solicitors.** (1) **PROHIBITED CONDUCT.** The department may revoke, suspend or limit the certificate of registration of a mortgage banker, loan originator or loan solicitor, or reprimand a mortgage banker, loan originator or loan solicitor, if it finds that the mortgage banker, loan originator or loan solicitor did any of the following:

(a) Made a material misstatement in an application for registration, or in information furnished to the department.

(b) Made a substantial misrepresentation in the course of practice injurious to one or more of the parties to a transaction.

(c) Made a false promise that influences, persuades or induces a client to act to his or her injury or damage.

(d) Pursued a continued and flagrant course of misrepresentation, or made false promises, whether directly or through agents or advertising.

(e) Acted for more than one party in a transaction without the knowledge and consent of all parties on whose behalf the mortgage banker, loan originator or loan solicitor is acting.

(f) Accepted a commission, money or other thing of value for performing an act as a loan originator unless the payment is from a mortgage banker who is registered under s. 440.72 (3) as employing the loan originator.

(g) As a loan originator, represented or attempted to represent a mortgage banker other than the mortgage banker who is registered under s. 440.72 (3) as employing the loan originator.

(h) Failed, within a reasonable time, to account for or remit any moneys coming into the mortgage banker's, loan originator's or loan solicitor's possession which belong to another person.

(i) Demonstrated a lack of competency to act as a mortgage banker, loan originator or loan solicitor in a way which safeguards the interests of the public.

(j) Paid or offered to pay a commission, money or other thing of value to any person for acts or services in violation of this subchapter.

(k) Violated any provision of this subchapter, ch. 138 or any federal or state statute, rule or regulation which relates to practice as a mortgage banker, loan originator or loan solicitor.

(L) Engaged in conduct which violates a standard of professional behavior which, through professional experience, has become established for mortgage bankers, loan originators or loan solicitors.

(m) Engaged in conduct, whether of the same or a different character than specified elsewhere in this section, which constitutes improper, fraudulent or dishonest dealing.

(o) In the course of practice as a mortgage banker, loan originator or loan solicitor, except in relation to housing designed to meet the needs of elderly individuals, treated a person unequally solely because of sex, race, color, handicap, sexual orientation, as defined in s. 111.32 (13m), religion, national origin, age or ancestry, the person's lawful source of income, or the sex or marital status of the person maintaining a household.

(p) Intentionally encouraged or discouraged any person from purchasing or renting real estate on the basis of race.

(q) Because of the age or location of the property or the race of the loan applicant, rather than because of the credit worthiness of the applicant and the condition of the property securing the loan:

1. Refused to negotiate, to offer or to attempt to negotiate a land contract, loan or commitment for a loan, or refused to find a loan.

2. Found a loan or negotiated a loan on terms less favorable than are usually offered.

(2) CONDUCT OF OFFICERS, DIRECTORS AND OTHERS. The department may revoke, suspend or limit a certificate of registration issued under this subchapter or reprimand a mortgage banker or loan solicitor registered under this subchapter, if a director, officer, trustee, partner or member of the mortgage banker or loan solicitor or a person who has a financial interest in or is in any way connected with the operation of the mortgage banker's or loan solicitor's business is guilty of an act or omission which would be cause for refusing to issue a certificate of registration to that individual.

(3) ORDERS OF THE DEPARTMENT. (a) *Orders to prevent or correct actions.* The department may issue general and special orders necessary to prevent or correct actions by a mortgage banker, loan originator or loan solicitor that constitute cause under this section for revoking, suspending or limiting a certificate of registration.

(b) *Types of special orders.* Special orders may direct a mortgage banker, loan originator or loan solicitor to cease and desist from engaging in a particular activity or may direct the mortgage banker, loan originator or loan solicitor to refund or remit to a loan applicant or borrower amounts that the mortgage banker, loan originator or loan solicitor got from actions which constitute cause under this section for revoking, suspending or limiting a certificate of registration.

(c) *Judicial review.* Orders of the department are subject to review as provided in ch. 227.

(4) PERIOD OF DISCIPLINARY ACTION; INELIGIBILITY FOR REGISTRATION. (a) *Period.* Except as provided in par. (b), the department shall determine in each case the period that a revocation, suspension or limitation of a certificate of registration is effective.

(b) *Ineligibility.* 1. Except as provided in subd. 2., if the department revokes a certificate of registration under sub. (1), the person is not eligible for a certificate of registration until the expi-

ration of a period which may not exceed 2 years after the effective date of the revocation.

2. If the department revokes a certificate of registration under sub. (1) (p) or (q), the person is not eligible for a certificate of registration until 5 years after the effective date of the revocation.

(5) PENALTIES FOR CERTAIN DISCRIMINATORY CONDUCT. (a) *Mandatory revocation or suspension.* Notwithstanding sub. (1) (intro.) and (4), if the department finds that a mortgage banker, loan originator or loan solicitor has violated sub. (1) (p) or (q), the department shall:

1. For the first offense, suspend the registration of the mortgage banker, loan originator or loan solicitor for not less than 90 days.

2. For the 2nd offense, revoke the registration of the mortgage banker, loan originator or loan solicitor.

(b) *Other penalties.* The penalty under par. (a) may be imposed in addition to any penalty imposed under s. 66.432, 101.22 or 440.80.

*History:* 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.77; 1993 a. 112.

**440.78 Fee splitting.** A mortgage banker, loan originator or loan solicitor may not pay a person who is not registered under this subchapter a commission, money or other thing of value for performing an act as a mortgage banker, loan originator or loan solicitor.

*History:* 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.78

**440.80 Penalties and private cause of action.** (1) PENALTIES. A person who violates s. 440.72 (1m) may be fined not more than \$1,000 or imprisoned for not more than 6 months or both. The district attorney of the county where the violation occurs shall enforce the penalty under this subsection on behalf of the state.

(2) PRIVATE CAUSE OF ACTION. A person who is aggrieved by an act which is committed by a mortgage banker, loan originator or loan solicitor and which is described in s. 440.77 (1) may recover all of the following in a private action:

(a) An amount equal to the greater of the following:

1. Twice the amount of the cost of loan origination connected with the transaction, except that the liability under this subdivision may not be less than \$100 nor greater than \$1,000 for each violation.

2. The actual damages, including any incidental and consequential damages, which the person sustained because of the violation.

(b) The aggregate amount of costs and expenses which the court determines were reasonably incurred by the person in connection with the action, together with reasonable attorney fees, notwithstanding s. 814.04 (1).

*History:* 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.80; 1989 a. 45

**440.81 Limitation on actions for commissions and other compensation.** A person who is engaged in the business or acting in the capacity of a mortgage banker, loan originator or loan solicitor in this state may not bring or maintain an action in this state to collect a commission, money or other thing of value for performing an act as a mortgage banker, loan originator or loan solicitor without alleging and proving that the person was registered under this subchapter as a mortgage banker, loan originator or loan solicitor when the alleged cause of action arose.

*History:* 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.81.

**440.82 Compensation presumed.** In a prosecution arising from a violation of this subchapter, proof that a person acted as a mortgage banker, loan originator or loan solicitor is sufficient, unless rebutted, to establish that compensation was received by, or promised to, that person.

*History:* 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.82

## SUBCHAPTER VIII

CEMETERY AUTHORITIES, SALESPERSONS AND  
PRENEED SELLERS

**440.90 Definitions.** In this subchapter:

- (1) "Business day" has the meaning given in s. 421.301 (6).
- (2) "Cemetery authority" has the meaning given in s. 157.061 (2).
- (3) "Cemetery merchandise" has the meaning given in s. 157.061 (3).
- (4) "Human remains" has the meaning given in s. 157.061 (8).
- (5) "Mausoleum" has the meaning given in s. 157.061 (9).
- (6) "Mausoleum space" has the meaning given in s. 157.061 (10).
- (6m) "Payment of principal" has the meaning given in s. 157.061 (11r).
- (7) "Preneed sales contract" has the meaning given in s. 157.061 (12).
- (8) "Preneed seller" means an individual who sells or solicits the sale of cemetery merchandise or an undeveloped space under a preneed sales contract or, if such an individual is employed by or acting as an agent for a cemetery authority or any other person, the cemetery authority or other person.
- (9) "Preneed trust fund" has the meaning given in s. 157.061 (13).
- (10) "Public mausoleum" has the meaning given in s. 157.061 (14).
- (11) "Sale" has the meaning given in s. 157.061 (16).
- (12) "Undeveloped space" has the meaning given in s. 157.061 (17).
- (13) "Warehouse" means a place of storage for cemetery merchandise sold under a preneed sales contract.
- (14) "Wholesale cost ratio" means the actual cost to a preneed seller to supply and deliver cemetery merchandise or to construct an undeveloped space divided by the price paid by the purchaser, excluding sales tax, finance or interest charges and insurance premiums.

History: 1989 a. 307

**440.91 Cemetery authorities and cemetery salespersons.** (1) Except as provided in sub. (6m), every cemetery authority that sells or solicits the sale of a total of 10 or more cemetery lots or mausoleum spaces during a calendar year and that pays any commission or other compensation to any person for selling or soliciting the sale of its cemetery lots or mausoleum spaces shall register with the department. The registration shall be in writing and shall include the names of the officers of the cemetery authority.

(2) Except as provided in subs. (7) and (10), every individual who sells or solicits the sale of, or who expects to sell or solicit the sale of, a total of 10 or more cemetery lots or mausoleum spaces during a calendar year shall register with the department. An individual may not be registered as a cemetery salesperson except upon the written request of a cemetery authority and the payment of the fee specified in s. 440.05 (1). The cemetery authority shall certify in writing to the department that the individual is competent to act as a cemetery salesperson. Within 10 days after the certification of any cemetery salesperson, the cemetery salesperson shall verify and furnish to the department, in such form as the department prescribes, all of the following information:

- (a) Name and address.
- (b) Educational qualifications.
- (c) Prior occupations.
- (d) Any other information which the department may reasonably require to enable it to determine the competency of the salesperson to transact the business of a cemetery salesperson in a manner which safeguards the interest of the public.

(3) Any cemetery salesperson may transfer to the employment of a cemetery authority, other than the cemetery authority that certified the salesperson under sub. (2), by filing a transfer form with the department and paying the transfer fee specified in s. 440.05 (7).

(4) Renewal applications shall be submitted to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include the applicable renewal fee specified under s. 440.08 (2) (a).

(5) Every cemetery authority requesting the registration or transfer of any cemetery salesperson shall be responsible for the acts of that salesperson while acting as a cemetery salesperson.

(6m) A cemetery authority of a cemetery organized, maintained and operated by a town, village, city, church, synagogue or mosque, religious, fraternal or benevolent society or incorporated college of a religious order is not required to be registered under sub. (1).

(7) An individual who solicits the sale of cemetery lots or mausoleum spaces in a cemetery organized, maintained and operated by a town, village, city, church, synagogue or mosque, religious, fraternal or benevolent society or incorporated college of a religious order is not required to be registered under sub. (2).

(8) Sections 452.13, 452.14, 452.15, 452.18, 452.21 and 452.22, as they apply to real estate salespersons, apply with equal effect to cemetery salespersons.

(9) No cemetery authority or cemetery salesperson registered under sub. (1) or (2) may pay a fee or commission as compensation for a referral or as a finder's fee relating to the sale of a cemetery lot, cemetery merchandise or mausoleum space to any person who is not registered under sub. (1) or (2) or who is not regularly and lawfully engaged in the sale of cemetery lots, cemetery merchandise or mausoleum spaces in another state or territory of the United States or a foreign country.

(10) Nothing in this section requires an individual who is registered as a preneed seller under s. 440.92 (1) to be registered as a cemetery salesperson under sub. (2) if the individual only sells or solicits the sale of cemetery merchandise or undeveloped spaces under preneed sales contracts.

History: 1989 a. 307 ss. 75, 80 to 83, 91; 1991 a. 39, 269

**440.92 Cemetery preneed sellers.** (1) REGISTRATION.

(a) Except as provided in subs. (4), (9) (a) and (10), every individual who sells or solicits the sale of cemetery merchandise or an undeveloped space under a preneed sales contract and, if the individual is employed by or acting as an agent for a cemetery authority or any other person, that cemetery authority or other person is required to be registered under this subsection.

(b) The department shall issue a certificate of registration as a cemetery preneed seller to any person who does all of the following:

1. Submits an application to the department on a form provided by the department.
2. Pays the fee under s. 440.05 (1).
3. Subject to ss. 111.321, 111.322 and 111.335, submits evidence satisfactory to the department that the person does not have a conviction record.
4. Meets any other reasonable requirements established by the department by rule to determine fitness to sell cemetery merchandise or an undeveloped space under a preneed sales contract. The rules may not require applicants to meet minimum education, experience or prior employment requirements or to pass any examination.

(c) Renewal applications shall be submitted to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include the applicable renewal fee specified under s. 440.08 (2) (a).

(e) Nothing in this subsection requires an individual who is registered as a cemetery salesperson under s. 440.91 (2) to be reg-

istered under this subsection if the individual does not conduct or solicit any sale under a preneed sales contract.

(2) **PRENEED SALES CONTRACTS** (a) A preneed sales contract for the sale of cemetery merchandise shall provide for the delivery of cemetery merchandise in one of the following ways:

1. By physically delivering the merchandise to the purchaser or the beneficiary named in the preneed sales contract.

2. By affixing the cemetery merchandise to the cemetery lot or mausoleum.

3. By storing the cemetery merchandise in a warehouse that is located on the property of the preneed seller if the preneed seller insures the cemetery merchandise and the preneed sales contract requires the preneed seller to ultimately affix the cemetery merchandise to the cemetery lot or mausoleum without additional charge.

3g. By storing the cemetery merchandise anywhere on the property of the preneed seller if the property of the preneed seller is located in this state, the preneed seller insures the cemetery merchandise and the preneed sales contract requires the preneed seller to ultimately affix the cemetery merchandise to a cemetery lot, to the outside of or the grounds surrounding a mausoleum or to any other outdoor location without additional charge.

4. By having the cemetery merchandise stored in a warehouse that is not located on the property of the preneed seller if the warehouse has agreed to ship the cemetery merchandise to the preneed seller, purchaser or beneficiary named in the preneed sales contract without additional charge to the purchaser and the preneed sales contract requires that the cemetery merchandise ultimately be affixed to the cemetery lot or mausoleum without additional charge. If the cemetery merchandise is delivered under this subdivision, all of the following apply:

a. At the time that the preneed sales contract is entered into, the preneed seller shall provide the purchaser with the name, address and telephone number of the warehouse and inform the purchaser that the warehouse is approved by the department.

b. If the name, address, telephone number or approval status of the warehouse changes before the cemetery merchandise is delivered, the preneed seller or warehouse shall notify the purchaser in writing of each change within 30 days after the change.

c. The preneed sales contract shall provide for the cemetery merchandise to be delivered within 30 days after the purchaser or beneficiary requests the preneed seller or warehouse to deliver the cemetery merchandise and shall contain the procedure and any requirements for making the request.

(am) If a preneed sales contract for the sale of cemetery merchandise requires the preneed seller to ultimately affix the cemetery merchandise to a cemetery lot, mausoleum or other location but the purchaser has not informed the preneed seller of the location where the cemetery merchandise is to be affixed and the location where the cemetery merchandise is to be affixed is not specified in the preneed sales contract, the preneed sales contract may provide that the preneed seller may charge the purchaser an additional fee at the time that the cemetery merchandise is affixed not to exceed the additional costs to the preneed seller that are necessitated by the purchaser's choice of location.

(b) If a preneed sales contract does not require the preneed seller to deliver cemetery merchandise by one of the methods under par. (a), the preneed seller shall deliver the cemetery merchandise under par. (a) 2.

(c) Except as provided in par. (cm), a preneed sales contract shall provide that if the purchaser voids the preneed sales contract at any time within 10 days after the date of the initial payment the preneed seller shall, within 30 days after the date on which the preneed sales contract is voided, refund all money paid by the purchaser for cemetery merchandise that has not been supplied or delivered and for the mausoleum space.

(cm) If a preneed sales contract for the sale of cemetery merchandise requires the preneed seller to physically alter any cemetery merchandise, the preneed sales contract shall provide that if

the purchaser voids the preneed sales contract at any time before the preneed seller has physically altered the cemetery merchandise in a manner or to a degree that makes the fair market value of the cemetery merchandise to the general public lower than the sale price of the cemetery merchandise under the preneed sales contract or within 10 days after the date of the initial payment, whichever occurs first, the preneed seller shall, within 30 days after the date on which the preneed sales contract is voided, refund all money paid by the purchaser for cemetery merchandise that has not been supplied or delivered.

(d) A preneed seller may not sell any undeveloped space unless the plans for the construction of the mausoleum have been submitted to the department of industry, labor and human relations for approval under s. 157.12 (2) (a) and the preneed sales contract includes the following language in not less than 10-point boldface type: "THE PLANS FOR CONSTRUCTING THE MAUSOLEUM SPACE HAVE BEEN SUBMITTED TO THE DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS FOR APPROVAL. THE SELLER IS RESPONSIBLE FOR ALL COSTS REQUIRED TO OBTAIN APPROVAL OF THE PLANS BY THE DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS, COMPLETE THE CONSTRUCTION, AND OBTAIN CERTIFICATION OF THE CONSTRUCTION BY THE DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS."

(e) A preneed sales contract for the sale of an undeveloped space shall provide that the purchaser may void the preneed sales contract if any of the following conditions applies:

1. The plans for constructing the mausoleum are not approved under s. 157.12 (2) (a).

2. The construction of the mausoleum does not begin within 3 years after the date of the sale.

3. If the mausoleum is a public mausoleum, the construction of the mausoleum is not certified under s. 157.12 (2) (b) within 6 years after the date of the sale.

(f) If a preneed sales contract is voided under par. (e), the preneed seller shall, within 30 days after the date on which the preneed sales contract is voided, refund all money paid by the purchaser, together with interest calculated at the legal rate of interest as provided under s. 138.04.

(g) A preneed seller may include in a preneed sales contract provisions that do any of the following:

1. Place restrictions on the right of the purchaser to assign his or her interest in any undelivered cemetery merchandise or undeveloped space to any other person, but only if such restrictions are consistent with regulations, established by the cemetery authority of the cemetery in which the cemetery merchandise will ultimately be affixed or in which the undeveloped space is located, that specify who may or may not be buried in the cemetery.

2. Require the purchaser to notify the preneed seller that the purchaser has assigned his or her interest in any undelivered cemetery merchandise or undeveloped space to any other person within a reasonable period of time after the interest has been assigned.

(h) A provision in a preneed sales contract that purports to waive or is in conflict with any part of this section is void.

(i) If a preneed sales contract includes provisions for the sale of cemetery merchandise or an undeveloped space that is subject to the trusting requirements under sub. (3) (a) and (b) and for the sale of other goods or services that are not subject to the trusting requirements under sub. (3) (a) and (b), the sale price of the goods or services that are not subject to the trusting requirements may not be inflated for the purpose of allocating a lower sale price to the cemetery merchandise or undeveloped space that is subject to the trusting requirements.

(j) A preneed sales contract shall be in writing. The preneed seller shall provide the purchaser with a copy of the preneed sales contract at the time that the preneed sales contract is entered into. A provision in a written preneed sales contract that limits the terms

of the transaction to those included in the written preneed sales contract and that disclaims any oral agreements pertaining to the transaction creates a rebuttable presumption that no oral preneed sales contract pertaining to the transaction exists. A preneed sales contract that is not in writing may not be voided by the preneed seller, but may be voided by the purchaser at any time before all of the cemetery merchandise purchased has been delivered, before the plans for constructing the mausoleum have been approved under s. 157.12 (2) (a) or, if the mausoleum is a public mausoleum, before the construction of the mausoleum has been certified under s. 157.12 (2) (b). If a preneed sales contract is voided under this paragraph, the preneed seller shall, within 30 days after the date on which the preneed sales contract is voided, refund all money paid by the purchaser, together with interest calculated at the legal rate of interest as provided under s. 138.04.

(k) A preneed sales contract shall include the following language in not less than 10-point boldface type: "SECTION 440.92 (2) OF THE WISCONSIN STATUTES SPECIFIES THE RIGHTS OF THE PURCHASER UNDER THIS CONTRACT. DEPENDING ON THE CIRCUMSTANCES, THESE MAY INCLUDE THE RIGHT TO VOID THE CONTRACT AND RECEIVE A REFUND OR THE RIGHT TO ASSIGN AN INTEREST IN THE CONTRACT TO ANOTHER PERSON."

(3) DEPOSITS IN PRENEED TRUST FUND AND CARE FUND (a) A preneed seller shall deposit into a preneed trust fund an amount equal to at least 40% of each payment of principal that is received from the sale of cemetery merchandise under a preneed sales contract, or the wholesale cost ratio for the cemetery merchandise multiplied by the amount of the payment of principal that is received, whichever is greater. In addition to the amount required to be deposited under this paragraph for the sale of cemetery merchandise and except as provided in par. (c), if a preneed seller receives payment for the sale of an undeveloped space under a preneed sales contract, the preneed seller shall deposit a percentage of each payment of principal that is received from the sale of the undeveloped space into a preneed trust fund, determined as follows:

1. If the actual cost to the preneed seller of constructing the undeveloped space in accordance with construction plans approved under s. 157.12 (2) (a) has been determined by a registered architect or engineer and accepted in a written construction agreement by both the preneed seller and the person who has agreed to construct the mausoleum, the minimum percentage of each payment of principal that must be deposited into the preneed trust fund is the percentage equal to the wholesale cost ratio for the undeveloped space. In this subdivision, "registered architect or engineer" means a person who is registered as an architect or engineer under ch. 443.

2. If the cost to the preneed seller of constructing the undeveloped space has not been determined as provided in subd. 1., the preneed seller shall deposit at least 40% of each payment of principal into the preneed trust fund.

(b) The preneed seller shall make the deposits required under par. (a) within 30 business days after the last day of the month in which each payment is received. Preneed trust funds shall be deposited and invested as provided in s. 157.19.

(c) A preneed seller is not required to make the deposits required under par. (a) 1. and 2. if any of the following applies:

1. The mausoleum is certified under s. 157.12 (2) (b) within 30 business days after the payment is received.

2. The undeveloped space is located in a mausoleum or project of mausoleums in which at least one mausoleum space was sold before November 1, 1991. In this subdivision, "project of mausoleums" means a group of mausoleums that have been or are intended to be built and arranged in a cemetery according to a single construction plan approved under s. 157.12 (2) (a).

3. The preneed seller files with the department a bond furnished by a surety company authorized to do business in this state or an irrevocable letter of credit from a financial institution, as

defined in s. 157.19 (1), and the amount of the bond or letter of credit is sufficient to secure the cost to the cemetery authority of constructing the mausoleum.

(d) If payments are received under a preneed sales contract for an undeveloped space, the preneed seller shall make deposits into the care fund required under s. 157.12 (3) in addition to any deposits required under par. (a).

(4) EXCEPTIONS TO REGISTRATION REQUIREMENT (a) Any person who sells or solicits the sale of cemetery merchandise under a preneed sales contract is not required to be registered under sub. (1) and the requirements of sub. (3) (a) and (b) do not apply to the sale if all payments received under the preneed sales contract are trusted as required under s. 445.125 (1) (a) or if all of the following conditions are met:

1. The preneed seller guarantees that the cemetery merchandise will be delivered not more than 180 days after the date of the sale.

2. The cemetery merchandise is delivered or the preneed sales contract is voided not more than 180 days after the date of the sale.

(b) If any preneed seller who is not registered under sub. (1) accepts a payment under a preneed sales contract and the merchandise is not delivered within 180 days after the date of the sale, the preneed seller shall immediately notify the purchaser that the purchaser is entitled to a refund of all money paid by the purchaser, together with interest calculated at the legal rate of interest as provided under s. 138.04, at any time before the merchandise is delivered.

(5) USE OF PRENEED TRUST FUNDS TO COVER COSTS OF CONSTRUCTION OR PARTIAL PERFORMANCE (a) Before the construction of a mausoleum for which a preneed trust fund has been established is certified under s. 157.12 (2) (b), the trustee of the preneed trust fund shall, upon receipt of a written request for the release of a specified amount of the funds from the preneed seller and the person who is constructing the mausoleum, release the specified amount of the funds, but only if the request is accompanied by a sworn statement, signed by the preneed seller and the person who is constructing the mausoleum, certifying that the specified amount does not exceed the amount charged to the preneed seller by the person who is constructing the mausoleum for labor that has actually been performed and materials that have actually been used in the construction of the mausoleum, and does not include any cost for which preneed trust funds have been previously released under this paragraph.

(b) Before all of the terms of a preneed sales contract for the sale of cemetery merchandise are fulfilled, the trustee of the preneed trust fund shall, upon receipt of a written request for the release of a specified amount of the funds from the preneed seller, release the specified amount of the funds, but only if the request is accompanied by a sworn statement, signed by the preneed seller, certifying that the specified amount does not exceed the actual cost to the preneed seller for any cemetery merchandise that has actually been supplied or delivered and for any cemetery services that have actually been performed, and does not include any cost for which preneed trust funds have been previously released under this paragraph.

(6) REPORTING; RECORD KEEPING; AUDITS (a) Every preneed seller registered under sub. (1) shall file an annual report with the department. The report shall be made on a form prescribed and furnished by the department. The report shall be made on a calendar-year basis unless the department, by rule, provides for other reporting periods. The report is due on or before the 60th day after the last day of the reporting period.

(b) The preneed seller shall include all of the following in the annual report under par. (a):

1. If the preneed seller is a corporation that is required to file a report under s. 180.1622 or 181.651, a copy of that report and the name, residence address and business address of each shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the corporation.

2. An accounting of amounts deposited in, amounts withdrawn from, income accruing to and the balance at the close of the reporting period of each preneed trust fund for which the preneed seller is the trustee.

(c) A preneed seller who is the trustee of any trust fund under s. 445.125 shall include in the report required under par. (a) an accounting of amounts deposited in, amounts withdrawn from, income accruing to and the balance at the close of the reporting period of such trust funds.

(d) All records described under pars. (b) 2. and (c) and maintained by the department are confidential and are not available for inspection or copying under s. 19.35 (1).

(e) The department shall review each report filed under par. (a) to determine whether the preneed seller is complying with this section.

(f) The preneed seller shall keep a copy of the report required under par. (a) at its principal place of business and, except for those records described under pars. (b) 2. and (c), shall make the report available for inspection, upon reasonable notice, by any person with an interest in purchasing cemetery merchandise or a mausoleum space from the preneed seller or by any person who has entered into or is the beneficiary of a preneed sales contract with the preneed seller.

(g) The preneed seller shall maintain all of the following:

1. The records needed to prepare the reports required under par. (a).

2. Records that show, for each deposit in a trust fund or account specified in pars. (b) 2. and (c), the name of the purchaser or beneficiary of the preneed sales contract relating to the deposit and the item purchased.

3. A copy of each preneed sales contract.

(h) The records under par. (b) 1. shall be permanently maintained by the preneed seller. The records under par. (b) 2. shall be maintained for not less than 3 years after all of the obligations of the preneed sales contract have been fulfilled. The department may promulgate rules to establish longer time periods for maintaining records under this paragraph.

(i) The department may promulgate rules requiring preneed sellers registered under sub. (1) to maintain other records and establishing minimum time periods for the maintenance of those records.

(j) The department may audit, at reasonable times and frequency, the records, trust funds and accounts of any preneed seller registered under sub. (1), including records, trust funds and accounts pertaining to services provided by a preneed seller which are not otherwise subject to the requirements under this section. The department may conduct audits under this paragraph on a random basis, and shall conduct all audits under this paragraph without providing prior notice to the preneed seller.

(k) The department may promulgate rules establishing a filing fee to accompany the report required under par. (a). The filing fee shall be based on the approximate cost of regulating preneed sellers.

**(7) APPROVAL OF WAREHOUSES** No person may own or operate a warehouse unless the warehouse is approved by the department. Upon application, the department shall approve a warehouse that is located in this state if the person who operates the warehouse is licensed as a public warehouse keeper by the department of agriculture, trade and consumer protection under ch. 99, but may not approve a warehouse that is located in this state unless the person is so licensed. The department shall promulgate rules establishing the requirements for approval of warehouses that are located outside this state. The rules shall require warehouses that are located outside this state to file with the department a bond furnished by a surety company authorized to do business in this state in an amount that is sufficient to guarantee the delivery of cemetery merchandise to purchasers under preneed sales contracts. The department shall compile and keep a current list of the names and addresses of all warehouses approved under this subsection

and shall make the list available for public inspection during the times specified in s. 230.35 (4) (f).

**(9) EXEMPTIONS; CERTIFICATION OF COMPLIANCE OF CEMETERY AFFILIATED WITH RELIGIOUS SOCIETY** (a) If the cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187 or that religious society files an annual certification with the department as provided in this subsection, neither the cemetery authority nor any employe of the cemetery is required to be registered as a cemetery preneed seller under sub. (1) during the period for which the certification is effective.

(b) A certification under this subsection shall be made on a form prescribed and furnished by the department and include all of the following:

1. The name and address of each cemetery to which the certification applies.

2. The name, address and social security number of each employe of the cemetery who sold or solicited the sale of cemetery merchandise or an undeveloped space under a preneed sales contract for the cemetery during the 12-month period immediately preceding the date on which the certification is filed with the department.

3. A notarized statement of a person who is legally authorized to act on behalf of the religious society under this subsection that, during the 12-month period immediately preceding the date on which the certification is filed with the department, each employe specified under subd. 2. and the cemetery authority have either fully complied or have substantially complied with subs. (2), (3) (a) and (b) and (5).

(c) If the statement under par. (b) 3. includes a statement of substantial compliance, the statement of substantial compliance must also specify those instances when the employe or cemetery authority did not fully comply with sub. (2), (3) (a) or (b) or (5).

(d) A certification under this subsection is effective for the 12-month period immediately following the date on which the certification is filed with the department.

(e) During the effective period specified under par. (d), the department may not audit the preneed trust funds or any records or accounts relating to the preneed trust funds of the cemetery authority or any employe of the cemetery to which a certification under this subsection applies.

(f) The religious society that is affiliated with a cemetery to which a certification under this subsection applies is liable for the damages of any person that result from the failure of any employe specified under par. (b) 2. or the cemetery authority to fully comply with sub. (2), (3) (a) or (b) or (5) during the 12-month period for which such compliance has been certified under this subsection.

**(10) EXEMPTIONS; CERTAIN NONPROFIT CEMETERIES** This section does not apply to a cemetery authority that is not required to be registered under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

History: 1989 a 307; 1991 a 16, 32, 39, 269; 1993 a 16

#### **440.93 Disciplinary actions and proceedings.**

**(1)** The department may reprimand a registrant or deny, limit, suspend or revoke a certificate of a cemetery authority, cemetery salesperson or preneed seller if it finds that the applicant or registrant, or, if the applicant or registrant, is an association, partnership, limited liability company or corporation, any officer, director, trustee, member or shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of security issued by the applicant or registrant, has done any of the following:

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

(b) Made a substantial misrepresentation or false promise to an individual to influence the individual to purchase a cemetery lot, cemetery merchandise or mausoleum space.

(c) Engaged in any practice relating to the sale of a cemetery lot, cemetery merchandise or mausoleum space which clearly

demonstrates a lack of knowledge or ability to apply professional principles or skills.

(d) Subject to ss. 111.321, 111.322 and 111.335, been convicted of an offense the circumstances of which substantially relate to the sale of a cemetery lot, cemetery merchandise or mausoleum space.

(e) Advertised in a manner that is false, deceptive or misleading.

(f) Subject to ss. 111.321, 111.322 and 111.34, engaged in any practice relating to the sale of a cemetery lot, cemetery merchandise or mausoleum space while the person's ability to practice was impaired by alcohol or other drugs.

(g) Violated this subchapter or any rule promulgated under this subchapter.

(2) The department shall determine in each case the period that a limitation, suspension or revocation of a certificate is effective.

History: 1989 a 307; 1993 a 112.

**440.945 Cemetery monuments.** (1) **DEFINITIONS** In this section:

(a) "Installed" means permanently affixed to a cemetery lot.

(b) "Monument" means any object made of granite, bronze, marble, stone, cement or other permanent material that is installed or intended to be installed to identify or memorialize human remains.

(c) "Vendor" means a person who sells, delivers, installs or cares for a monument, other than the cemetery authority of the cemetery in which the monument is installed.

(2) **CEMETERY AUTHORITY POWERS.** A cemetery authority may do any of the following:

(a) Adopt regulations, consistent with this section and with standards that the cemetery authority uses for its own monument installations, prescribing requirements and procedures for the sale, delivery, installation or care of monuments, including requirements that each vendor provide reasonable advance notice to the cemetery authority of the date on which the vendor desires to install a monument; that each vendor carry worker's compensation insurance and a minimum amount of comprehensive general liability insurance, such minimum amount not to exceed \$300,000; and that each owner of a cemetery lot pay all fees and other amounts due the cemetery authority to satisfy any encumbrances pertaining to the cemetery lot before a monument is installed.

(b) Assist a vendor in marking the location for a monument and inspect the installation of the monument to ensure that it is properly installed by the vendor.

(c) Charge either the owner of a cemetery lot or a vendor a reasonable fee to cover the cemetery authority's labor costs. In this paragraph, "labor costs" means the amount, calculated in accordance with generally accepted accounting principles and practices, that is payable to employees of the cemetery authority for wages and fringe benefits for the period that the employees were engaged in marking the location for and inspecting the installation of the monument to ensure that it was properly installed, and may include any general administrative or overhead costs of the cemetery authority or any other costs that are directly related to marking the location for and inspecting the installation of the monument to ensure that it was properly installed.

(3) **DISCLOSURE OF INFORMATION TO CONSUMERS.** (a) Every cemetery authority shall keep on file and make available for inspection and copying to owners and prospective purchasers of cemetery lots and to other interested persons all of the following information:

1. An itemized list of the amounts charged for any services provided by the cemetery authority relating to the finishing, installation or care of monuments.

2. Any regulations adopted under sub. (2) (a).

(b) Upon the request of any person who is interested in purchasing a monument from a cemetery authority or a vendor, the cemetery authority or vendor shall provide the person with an itemized list of the amount charged for each finished monument in which the person is interested and for any services that may be provided by the cemetery authority or vendor relating to the installation or care of the monument.

(4) **PROHIBITED CONDUCT.** (a) A cemetery authority may not do any of the following:

1. Require the owner or purchaser of a cemetery lot to purchase a monument or services related to the installation of a monument from the cemetery authority.

2. Restrict the right of the owner or purchaser of a cemetery lot to purchase a monument or services related to the installation of a monument from the vendor of his or her choice.

3. Except as provided in sub. (2) (c), charge the owner or purchaser of a cemetery lot a fee for purchasing a monument or services related to the installation of a monument from a vendor, or charge a vendor a fee for delivering or installing the monument. Nothing in this subdivision shall be construed to prohibit a cemetery authority from charging the owner or purchaser of a cemetery lot a reasonable fee for services relating to the care of a monument.

4. Discriminate against any owner or purchaser of a cemetery lot who has purchased a monument or services related to the installation of a monument from a vendor.

(b) A vendor may not falsely represent to any person any regulations adopted by a cemetery authority under sub. (2) (a) or falsely represent to any person the vendor's relationship with a cemetery authority.

(5) **ENFORCEMENT.** (a) If the department has reason to believe that any person is violating this section and that the continuation of that activity might cause injury to the public interest, the department may investigate.

(b) The department of justice or any district attorney, upon informing the department of justice, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this section. The court may, prior to entry of final judgment, make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, if proof of such loss is submitted to the satisfaction of the court. The department of justice may subpoena persons and require the production of books and other documents, and may request the department of regulation and licensing to exercise its authority under par. (a) to aid in the investigation of alleged violations of this section.

(c) In lieu of instituting or continuing an action under this subsection, the department of justice may accept a written assurance of discontinuance of any act or practice alleged to be a violation of this section from the person who has engaged in the act or practice. An assurance entered into under this paragraph shall not be considered evidence of a violation of this section, but a violation of the assurance shall be treated as a violation of this section.

History: 1989 a 95; 1989 a 307 ss. 84, 86; Stats 1989 s. 440.945

**440.95 Penalties.** (1) Any cemetery authority that is required to register under s. 440.91 (1) and that knowingly fails to register may be fined not more than \$100.

(2) Any individual who is required to register as a cemetery salesperson under s. 440.91 (2) and who fails to register may be fined not less than \$25 nor more than \$200 or imprisoned for not more than 6 months or both.

(3) Except as provided in subs. (1) and (2), any person who violates s. 440.91 or any rule promulgated under s. 440.91 may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(4) Any person who intentionally does any of the following may be fined not more than \$1,000 or imprisoned for not more than 90 days or both:

- (a) Fails to register as a preneed seller as required under s. 440.92 (1) (a).
- (b) Fails to deposit or invest preneed trust funds or care funds as required under s. 440.92 (3).
- (c) Fails to file a report or files an incomplete, false or misleading report under s. 440.92 (6).
- (d) Files a false or misleading certification under s. 440.92 (9).
- (5) Except as provided in sub. (4), any person who violates s. 440.92 or any rule promulgated under s. 440.92 may be required to forfeit not more than \$200 for each offense. Each day of continued violation constitutes a separate offense.

(6) (a) Any cemetery authority or vendor that fails to disclose information to consumers in violation of s. 440.945 (3) may be required to forfeit not more than \$200.

(b) Any cemetery authority or vendor that violates s. 440.945 (4) may be required to forfeit not more than \$200 for the first offense and may be required to forfeit not more than \$500 for the 2nd or any later offense within a year. The period shall be measured by using the dates of the offenses that resulted in convictions.

History: 1989 a 307 ss. 75, 87.