

1991 Senate Bill 397

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# 1991 WISCONSIN ACT 278

AN ACT to repeal 100.18 (4); to amend 181.32 (2), 440.08 (2) (a) (intro.) and 440.23 (1); and to repeal and recreate 440.05 (intro.) and subchapter III of chapter 440 of the statutes, relating to: solicitation of funds for charitable purposes, granting rule-making authority and providing penalties.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 100.18 (4) of the statutes is repealed.

**SECTION 2.** 181.32 (2) of the statutes is amended to read:

181.32 (2) Upon issuing a certificate of incorporation, the secretary of state shall inform the corporation of the reporting requirements under s. ~~440.41~~ 440.42 for charitable organizations that solicit contributions.

**SECTION 3.** 440.05 (intro.) of the statutes, as affected by 1991 Wisconsin Act 39, section 3290, is repealed and recreated to read:

**440.05 Standard fees.** (intro.) The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 440.85, 442.06, 444.03, 444.05, 444.11, 449.17, 449.18, 459.33 and 459.46:

**SECTION 4.** 440.08 (2) (a) (intro.) of the statutes, as created by 1991 Wisconsin Act 39, is amended to read:

440.08 (2) (a) (intro.) Except as provided in par. (b) and in ss. ~~440.41~~ 440.42, 440.43, 440.44, 440.51, 440.85, 442.04, 442.06, 444.03, 444.05, 444.11, 448.065, 449.17, 449.18, 459.24, 459.33 and 459.46, the renewal dates and renewal fees for credentials are as follows:

**SECTION 5.** 440.23 (1) of the statutes, as affected by 1991 Wisconsin Act 39, is amended to read:

440.23 (1) If the holder of a credential pays a fee required under s. 440.05 (1) or (6), ~~440.41 (2) (e), (5) or (7)~~ 440.42 (1), 440.43 (1), 440.44 (1), 440.85 (2) (c), 444.03, 444.05, 444.11, 459.24 (5) or (6) (c), 459.28 (1),

459.32 (3) 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).

**SECTION 6.** Subchapter III of chapter 440 of the statutes is repealed and recreated to read:

## CHAPTER 440

### 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 connection with soliciting, which rep-

resents 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. 163, 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 con-

tributions 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, cooky 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.

**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.

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(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 profes-

sional 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).

**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 evidence 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 regis-

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tered 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).

**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 paid solicitor 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.

**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

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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.

**440.455 Solicitation disclosure requirements. (1)**

Except as provided in sub. (4), if a paid solicitor or unpaid solicitor solicits a contribution for a charitable organization that is required to be registered under s. 440.42 (1), the paid solicitor 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 paid solicitor 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 paid solicitor 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 paid solicitor and that the solicitation is being conducted by a paid solicitor.

(b) The paid solicitor may not represent that any part of the contributions received by the paid solicitor 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 paid solicitor 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 paid solicitor 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 paid solicitor 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.

**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.

**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 organiza-

tions, 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 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.

**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.

**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).

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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.

**SECTION 7. Effective date.** This act takes effect on the first day of the 7th month beginning after publication.

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