

## CHAPTER 440

## DEPARTMENT OF REGULATION AND LICENSING

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## SUBCHAPTER I

## GENERAL PROVISIONS

**440.01 Definitions. (1)** In chs. 440 to 459, unless the context requires otherwise:

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

(b) "Grant" means the substantive act of the examining board, division or section, of approving the applicant for registration, certification or licensure and the preparing, executing, signing or sealing of the certificate of registration or license.

(c) "Issue" means the procedural act of the department of transmitting the certificate or license to the registrant.

(d) To "limit" a license, permit or certificate means to impose conditions and requirements upon the holder thereof, and to restrict the scope of the holder's practice.

(e) "Reprimand" means to publicly warn the holder of a license, permit or certificate.

(f) To "revoke" a license, permit or certificate means to completely and absolutely terminate the license, permit or certificate, and all rights, privileges and authority previously conferred thereby.

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

(h) To "suspend" a license, permit or certificate means to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by a grant of a license, permit or certificate.

(2) In this subchapter "examining board" includes the board of nursing.

**History:** 1977 c. 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45).

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 attached to the department for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

(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 licensing agencies, similar licensing 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 attached to the department under s. 15.405.

(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 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 licenses, permits and certificates issued under chs. 440 to 459. Upon request of any person who holds a license, permit or certificate issued under chs. 440 to 459 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 licenses, permits or certificates issued under chs. 440 to 459 to do any of the following:

(a) Display the license, permit or certificate 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 procedure for filing a complaint against the holder.

(9) (a) In recommending in a budget request under s. 16.42 any increases or decreases in fees under s. 440.05 for initial licenses, permits, certificates or registrations for which an examination is not required or for renewals of licenses, permits, certificates or registrations, the department shall use the same methods used to establish the discrete examination fees under s. 440.05 (1) for different occupations regulated by the same board or examining board in the department.

(b) The department shall study the feasibility of establishing different fees under s. 440.05 for initial licenses, permits, certificates and registrations for which an examination is not required, and for renewals of licenses, permits, certificates and registrations for different occupations regulated by the same board or examining board in the department.

**History:** 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340; 1989 a. 31, 340.

**440.035 General duties of examining boards.** Each examining board attached to the department shall:

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

(2) Be the supervising authority of all personnel, other than shared personnel, engaged in the review, investigation or handling of information regarding qualification of applicants for license, examination questions and answers, accreditation, investigation incident thereto, and disciplinary matters affecting licensees, or in the establishing of regulatory policy or the exercise of administrative discretion with regard to qualification or discipline of applicants or licensees or accreditation.

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

(4) Compile and keep current a register of the names and addresses of all licensees 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.

**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 require, the routine housekeeping functions required by the department and the examining 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.

(3) Control the allocation, disbursement and budgeting of the funds received by the examining boards in connection with their licensing, certifying and related activities.

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

(5) With the advice of the examining 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 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 459, 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.

**440.045 Disputes.** Any dispute between an examining 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.  
Relationship between department, cosmetology examining board and governor discussed 70 Atty. Gen. 172.

**440.05 Standard fees.** The following standard fee schedule applies to all licenses, permits, registrations and certificates issued under chs. 440 to 459, except ss. 440.41, 440.62, 440.72, 440.85, 444.03, 444.05, 444.11 and 459.33 or unless otherwise specifically provided by statute:

**NOTE:** 440.05 (intro.) is amended by 1989 Wis. Acts 307 and 316, eff. 11-1-91, to read:

"440.05 STANDARD FEES. The following standard fee schedule applies to all licenses, permits, registrations and certificates issued under chs. 440 to 459, except ss. 440.41, 440.62, 440.72, 440.85, 440.92, 444.03, 444.05, 444.11 and 459.33 or unless otherwise specifically provided by statute."

(1) Examination: The fee for examination for the initial license, permit, certificate or registration shall be an amount equal to the actual cost of the examination, as determined by the department, but not less than \$40. The initial license, permit, certificate or registration shall be granted to applicants upon successful completion of the examination and upon completion of other applicable requirements. If an examination is not required, the initial license shall be granted upon payment of a \$40 fee if the applicant is otherwise qualified.

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89-90 Wis. Stats. 3712

(2) Reciprocal license, permit, certificate or registration: \$50.

(3) Renewals: The fee for renewal of a license, permit, certificate or registration for the occupations under each of the following designations shall be:

- (a) *Accounting examining board*.
1. Certified public accountant, \$43.
  2. Public accountant, \$43.

(b) *Examining board of architects, professional engineers, designers and land surveyors*.

1. Designer, \$33.
2. Land surveyor, \$33.
3. Architect, \$33.
4. Professional engineer, \$33.

(c) *Barbering and cosmetology examining board*.

1. Barber or cosmetologist, \$40.
2. Aesthetician, \$40.
3. Manager under s. 454.06 (3), \$40.
4. Instructor under s. 440.63, \$40.
5. Electrologist, \$40.
6. Manicurist, \$40.

(d) *Chiropractic examining board*.

1. Chiropractor, \$71.

(f) *Dentistry examining board*.

1. Dentist, \$35.
2. Dental hygienist, \$35.

(g) *Funeral directors examining board*.

1. Funeral director, \$58.
2. Funeral director certified in good standing, \$58.

(h) *Hearing and speech examining board*.

1. Hearing instrument specialist, \$119.

(i) *Board of nursing*.

1. Licensed practical nurse, \$32.
2. Registered nurse, \$32.
3. Nurse-midwife, \$32.

(j) *Nursing home administrator examining board*.

1. Nursing home administrator, \$53.

(k) *Optometry examining board*.

1. Optometrist, \$63.

(L) *Other*.

1. Private detective, \$124.
2. Acupuncturist, \$82.

NOTE: Par. (L) is affected by 1989 Wis. Acts 307 and 359, eff. 11-1-91, to read:

“(L) *Other*.

- 1m. Cemetery salesperson, \$45.
2. Acupuncturist, \$82.
3. Private detective, \$124.”

(m) *Pharmacy examining board*.

1. Pharmacist, \$57.

(n) *Medical examining board*.

- 1g. Occupational therapists, \$50.

1m. Occupational therapy assistants, \$35.

- 1r. Physician (doctor of medicine), \$82.
2. Physician (doctor of osteopathy), \$82.
3. Physician (doctor of osteopathy and surgery), \$82.
4. Physician's assistant, \$82.
5. Physical therapist, \$82.
6. Podiatrist, \$82.
7. Respiratory care practitioners, \$82.

NOTE: Subd. 7 is created by 1989 Wis. Act 229, eff. 5-1-91.

(o) *Psychology examining board*.

1. Psychologist, \$74.
2. Private practice school psychologist, \$74.

(om) *Real estate appraisers board*.

1. Real estate appraisers, \$97.

(p) *Real estate board*.

1. Real estate broker, \$47.
2. Real estate salesperson, \$47.

3. Cemetery salesperson, \$45.

NOTE: Subd. 3 is renumbered (L) 1m by 1989 Wis. Act 307, eff. 11-1-91.

4. Time-share salespersons, \$45.

(q) *Veterinary examining board*.

1. Veterinarian, \$50.
2. Animal technician, \$50.

(4) Penalty for late renewal, less than 30 days beyond the expiration date: \$5.

(5) Penalty for late renewal, 30 days or more beyond the expiration date: \$25.

(6) Apprentice, journeyman, student and temporary license, permit or certificate, and renewal thereof: \$10.

(7) Replacement of lost certificate, name or address change on certificate, issuance of duplicates and transfer fee: \$5.

(8) Initial or renewal license, permit, certificate or registration for funeral establishments, barber or cosmetologist, aesthetician, electrologist or manicurist establishments, pharmacies, drug manufacturers, drug distributors, cemetery associations, corporations, partnerships and business firms: \$50.

NOTE: Sub. (8) is amended by 1989 Wis. Act 307, eff. 11-1-91, to read:

“(8) Initial or renewal license, permit, certificate or registration for funeral establishments, barber or cosmetologist, aesthetician, electrologist or manicurist establishments, pharmacies, drug manufacturers, drug distributors, cemetery authorities, corporations, partnerships and business firms: \$50.”

(9) Endorsement of licensees 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.

**440.06 Refunds and reexaminations.** The secretary may establish uniform procedures for refunds of fees paid under s. 440.05 and uniform procedures and fees for reexaminations under chs. 440 to 459.

History: 1977 c. 418; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45)

**440.07 Examination standards and services.** (1) In addition to the standards specified in chs. 440 to 459, examinations for licensure, certification, permit or registration in chs. 440 to 459 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 or examining board having authority to license, certify, register or permit 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.

History: 1987 a. 27.

**440.09 License period.** All licenses, permits and certificates issued or renewed under chs. 440 to 459 shall be renewed for a 2-year period, except:

(1) Apprentice, student and temporary licenses, permits and certificates.

(2) Registrations under s. 440.41.

(2m) Licenses under s. 440.62.

(3) Certificates under ch. 442.

History: 1977 c. 29; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1979 c. 337, 355; 1981 c. 356; 1987 a. 265.

**440.10 Notice of renewal.** The department shall mail a notice of renewal to the last address provided to the department by each license, certificate or permit holder under chs. 440 to 459 at least 30 days prior to the expiration date of the license, certificate or permit. 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 license, certificate or permit. Failure to receive a notice of renewal does not relieve the holder from

the obligation to pay a penalty for late renewal under s. 440.05 (4) or (5).

History: 1987 a. 27.

**440.11 Change of name or address.** (1) An applicant for or recipient of a license, certificate or permit under chs. 440 to 459 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 or board may serve any process, notice or demand on the holder of any license, certificate or permit by mailing it to the last-known address of the holder as indicated in the records of the department, examining 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.

**440.20 Disciplinary proceedings.** (1) Any person may file a complaint before any examining board and request any examining board to commence disciplinary proceedings against any permittee, registrant or license or certificate holder.

(2) Any person who in good faith testifies before the department or any examining board or otherwise provides the department or any examining board with information concerning possible unprofessional conduct, negligence in treatment or any other violation by a person holding a license, permit, certificate or registration issued by the department is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such 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.

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

(4) In addition to any grounds for discipline specified in chs. 440 to 459, the department, real estate board or appropriate examining board may reprimand any holder of a license, permit, certificate or registration or deny, limit, suspend or revoke a license, permit, certificate or registration of any person who intentionally violates s. 146.024 (2) or intentionally discloses the results of a blood test in violation of s. 146.025 (5) (a) or (5m).

History: 1977 c. 418; 1979 c. 34; 1985 a. 29; 1989 a. 31, 201.

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.

**440.22 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 or examining 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 license, certificate, permit or registration in which the department or an examining board attached to the department orders suspension, limitation or revocation of the license, certificate, permit or registration or reprimands the holder, the department or examining board may, in addition to this

discipline, assess all or part of the costs of the proceeding against the holder. Costs are payable to the department.

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

History: 1987 a. 27.

**440.23 Cancellation of license, certificate, permit or registration; reinstatement.** (1) If the holder of a license, certificate, permit or registration issued under chs. 440 to 459 pays a fee required under s. 440.05 (1) to (6) or (8), 440.41 (2) (c), (5) or (7), 440.62 (2) (a), 440.72 (2) (intro.) or (7), 440.74 (2) (a), 440.85 (2) (c), 444.03, 444.05 or 444.11 by check and the check is not paid by the bank upon which the check is drawn, the department may cancel the license, certificate, permit or registration 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 license, certificate, permit or registration, the department shall mail a notice to the holder that informs the holder that the check was not paid by the bank and that the holder's license, certificate, permit or registration 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 license, certificate, permit or registration has expired, pays the applicable penalty for late renewal specified in s. 440.05 (4) or (5) or established under s. 440.62 (2) (e) 1 or 440.83.

(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 license, certificate, permit or registration under this section completely terminates the license, certificate, permit or registration and all rights, privileges and authority previously conferred by the license, certificate, permit or registration.

(5) The department may reinstate a license, certificate, permit or registration 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.

**440.25 Judicial review.** The department may seek judicial review under ch. 227 of any final disciplinary decision of 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, 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.

## 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 or corporation. An individual, the members of a partnership and the officers or directors of a corporation, having a private detective agency license, are not required to have a private detective 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, co-owner or employe of a licensed private detective agency.

(b) *Applications.* The department shall prescribe forms for original and renewal applications. All applications shall be executed under oath. A partnership application shall be executed by all members of the partnership. 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 deemed necessary, the department shall if it deems the applicant qualified, grant the proper license upon payment of the fee specified in s. 440.05 (8) if the applicant is an agency or upon payment of the fee specified in s. 440.05 (1) if the applicant is a private detective. No license shall be issued for a longer period than 2 years, and the license of a private detective shall expire on the expiration 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. 440.05 (3) to (5) and (8). 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 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 residence 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. For each application for a private security permit filed with the chief of police or other designated official the agency shall remit a fee of \$2 to the municipality 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.

**Cross Reference:** See 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

#### PROFESSIONAL FUND RAISERS AND PROFESSIONAL SOLICITORS

**440.41 Solicitation and collection of funds for charitable purposes. (1) DEFINITIONS.** As used in this section unless the context requires otherwise:

(a) "Charitable organization" includes any benevolent, philanthropic, patriotic or eleemosynary person or one purporting to be such.

(b) "Contribution" means the promise or grant of any money or property of any kind or value, including net proceeds from sales of tickets or goods.

(c) "Professional fund raiser" includes any person who for compensation or other consideration plans, conducts, manages, or carries on any drive or campaign in this state for the purpose of soliciting contributions for or on behalf of any charitable organization or any other person, or who engages in the business of, or holds himself or herself out to persons in this state as independently engaged in the business of soliciting contributions for such purpose. A bona fide officer or employe of a charitable organization is not deemed a professional fund raiser unless his or her salary or other compensation is computed on the basis of funds to be raised, or actually raised.

(d) "Professional solicitor" includes any person who is employed or retained for compensation by a professional fund raiser to solicit contributions for charitable purposes from persons in this state.

**(1m) VETERANS ORGANIZATIONS EXEMPT.** This section does not apply to veterans organizations incorporated under ch. 188 or chartered under federal law.

**(2) REGISTRATION OF CHARITABLE ORGANIZATIONS.** (a) Every charitable organization, except as otherwise provided in sub. (3), which intends to solicit contributions from persons in this state by any means whatsoever shall, prior to any solicitation, file with the department upon forms prescribed by it, the following information:

1. The name under which the charitable organization intends to solicit contributions.

2. The names and address of officers, directors, trustees, and executive personnel.

3. The names and addresses of any professional fund raiser and professional solicitors who act or will act on behalf of the charitable organization, together with copies of contracts or statements setting forth the terms of the arrangements for salaries, bonuses, commissions or other remuneration to be paid to the professional fund raisers and professional solicitors. Where any such contract or arrangement is executed after the filing of the registration statement, a copy thereof shall be filed within 10 days of the date of execution.

4. The general purposes for which the charitable organization is organized.

5. The purposes for which the contributions to be solicited will be used.

6. The period of time during which the solicitation will be made.

7. The addresses of the organization and the addresses of any offices in this state. If the organization does not maintain a principal office in this state, the name and address of any person in this state having custody of any of its financial records.

8. Where and when the organization was legally established, its tax exempt status and a copy of its latest filed federal tax form.

9. Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions or has lost its authorization to so solicit contributions.

10. Board, group or individual having final discretion as to the distribution and use of contributions received.

11. Such other information as may be necessary or appropriate in the public interest or for the protection of contributors.

(am) Every registered organization shall notify the department within 10 days of any change in the information required to be furnished by such organization under this section.

(b) The registration form, and any other documents prescribed by the department, shall be signed by the president or other authorized officer and the chief fiscal officer of the charitable organization.

(c) For filing such registration, the department shall receive a fee of \$10, to be paid at the time of registration.

(d) Such registration shall remain in effect unless it is either canceled by the department with the advice and consent of the attorney general or withdrawn by the organization.

(e) In no event shall a registration of a charitable organization continue, or be continued, in effect after the date such organization should have filed, but failed to file, an annual report, and such organization shall not be eligible to file a new registration until it shall have filed the required annual report with the department and such additional information concerning the activities of the organization during any interim period not covered in reports filed with the department. If such report is subsequently filed such organization may file a new registration.

**(3) EXEMPT PERSONS.** The following persons shall not be required to register with the department:

(a) Corporations organized under the religious corporations law, and other religious agencies and organizations, and charities, agencies, and organizations operated, supervised or controlled by or in connection with a religious organization.

(b) Educational institutions when solicitation of contributions is confined to its student body and their families, alumni, faculty and trustees.

(c) Any charitable organization which does not intend to solicit and receive and does not actually receive contributions in excess of \$4,000 during any 12-month period ending December 31 of any year, provided all of its fund raising functions are carried on by persons who are unpaid for such services. However, if the gross contributions received by such charitable organization during any 12-month period ending December 31 of any year is in excess of \$4,000, it shall, within 30 days after the date it has received total contributions in excess of \$4,000, register with the department under sub. (2). Fraternal, civic, benevolent, patriotic and social organizations which solicit contributions solely from their membership shall not be required to register with the department.

(d) Persons requesting any contributions for the relief of any individual, specified by name at the time of the solicitation, if all of the contributions collected, without any deductions whatsoever, are turned over to the named beneficiary.

(e) Any local, county or area division of a charitable organization supervised and controlled by a superior or parent organization, incorporated, qualified to do business, or doing business within this state, if the superior or parent organization files a registration statement on behalf of the local, county or area division in addition to or as part of its own registration statement. Where a registration statement has been filed by a superior or parent organization, it shall file the annual report required under sub. (4) on behalf of the local, county or area division in addition to or as part of its own report, but the accounting information required under sub. (4) shall be set forth separately and not in consolidated form with respect to every local, county or area division which raises or expends more than \$500 during any 12-month period ending December 31 of any year.

(f) Any state agency, city, village, town or school board, as defined in s. 115.001 (7).

**(4) REPORTS BY REGISTERED CHARITABLE ORGANIZATIONS.**

(a) Every charitable organization registered under sub. (2) which receives in any 12-month period ending December 31 contributions in excess of \$50,000 and every charitable organization whose fund raising functions are carried on by any person who is paid for the services shall file a written report with the department upon forms prescribed by the department, on or before June 30 of each year if its books are kept on a calendar basis, or within 6 months after the close of its fiscal year if its books are kept on a fiscal year basis, which shall include a financial statement covering the immediately preceding 12-month period of operation. The financial statement shall fairly represent the financial operations of the organization and contain such information as the department requires in sufficient detail to permit public evaluation of its operations and shall include but not be limited to a balance sheet and statement of income and expense and shall be consistent with forms furnished by the department clearly setting forth the following: gross receipts and gross income from all sources, broken down into total receipts and income from each separate solicitation project or separate special event; cost of administration; cost of solicitation; cost of programs designed to inform or educate the public; funds or properties transferred out of this state, with explanation as to recipient and purpose; total net amount disbursed or dedicated for each major purpose, charitable or otherwise. The report shall also include a statement of any changes in the information required to be contained in the registration form filed on behalf of the organization. The report shall be signed by the president or other authorized officer and the chief fiscal officer of the organization, and shall be accompanied by an opinion signed by an independent certified public accountant that the financial statement fairly represents the financial operations of the organization in sufficient detail to permit public evaluation of its operation.

(b) Every organization registered under sub. (2) which receives in any 12-month period ending December 31 contributions not in excess of \$50,000 and all of whose fund raising functions are carried on by persons who are unpaid for such services shall file a written report with the department upon forms prescribed by the department on or before June 30 of each year if its books are kept on a calendar basis, or within 6 months after the close of its fiscal year if its books are kept on a fiscal year basis, which shall include a financial statement covering the immediately preceding 12-month period of operation fairly representing the financial operations of the

organization and contain such information as the department requires in sufficient detail to permit public evaluation of its operations and shall include but not be limited to a statement of the organization's gross receipts from contributions, fund raising expenses including a separate statement of the cost of any goods, services or admissions supplied as part of its solicitations, and the disposition of the net proceeds from contributions. The report shall also include a statement of any changes in the information required to be contained in the registration form filed on behalf of the organization. The report shall be signed by the president or other authorized officer and the chief fiscal officer of the organization who shall certify that the statements are true and correct to the best of their knowledge.

(c) For any fiscal or calendar year of any organization registered pursuant to sub. (2) in which such organization would have been exempt from registration pursuant to sub. (3) if it had not been so registered, or in which it did not solicit or receive contributions, such organization shall file, on or before June 30 of each year if its books are kept on a calendar basis, or within 6 months after the close of its fiscal year if its books are kept on a fiscal year basis, instead of the reports required by par. (a) or (b), a report in the form of an affidavit of its president and chief fiscal officer stating the exemption and the facts upon which it is based or that such organization did not solicit or receive contributions in such year. The affidavit shall also include a statement of any changes in the information required to be contained in the registration form filed on behalf of such organization.

(d) The department, with the advice and consent of the attorney general, shall cancel the registration of any organization which fails to comply with par. (a), (b), (c) or (e) within the time prescribed, or fails to furnish additional information as is requested by the department or attorney general within the required time. The department may grant an organization a 3-month extension for filing a financial report. Notice of cancellation shall be mailed to the registrant at least 15 days before the effective date thereof.

(e) Any charitable organization which exceeds \$500 in gross receipts from each separate solicitation project or separate special event, which disburses, for the total cost of solicitation for each such separate solicitation project or separate special event, more than 25% of gross receipts from each project or separate special event, shall file a written report as described in par. (a) with the department within 30 days of the completion of such project or separate special event.

(f) The department shall semiannually compile and make public lists of the charitable organizations registered indicating the gross receipts and total solicitation costs for each organization and each project or special event in each organization in dollar values and percentages.

(g) For filing such annual financial statement, the department shall receive a fee of \$10, to be paid at the time of filing.

**(5) PROFESSIONAL FUND RAISERS; REGISTRATION AND BOND REQUIRED.** No person shall act as a professional fund raiser for a charitable organization required to register pursuant to sub. (2) until the person has first registered with the department. Applications for such registration shall be in writing, under oath, in the form prescribed by the department and shall be accompanied by an annual fee of \$50. The applicant shall at the time of making application, file with, and have approved by, the department a bond in which the applicant shall be the principal obligor, in the sum of \$5,000, with one or more sureties whose liability in the aggregate as such sureties will at least equal such sum. The bond shall run to the department for the use of the state and to any person who

may have a cause of action against the obligor of such bond for any malfeasance or misfeasance in the conduct of such solicitation. Registration when effected shall be for a period of one year, or a part thereof, expiring on August 31, and may be renewed upon the filing of the bond and fee prescribed herein for additional one-year periods.

(6) **CONTRACTS TO BE RETAINED.** All contracts entered into by such professional fund raisers and charitable organizations shall be in writing and true and correct copies shall be filed with the department and kept on file in the offices of the charitable organization and the professional fund raiser for a period of 3 years from the date the solicitation of contributions provided for actually commences. The contracts shall be available for inspection and examination by any authorized agency.

(7) **PROFESSIONAL SOLICITOR; REGISTRATION REQUIRED.** Every professional solicitor employed or retained by a professional fund raiser required to register pursuant to this subsection shall, before accepting employment by such professional fund raiser, register with the department. Application for such registration shall be in writing, under oath, in the form prescribed by the department, and shall be accompanied by a fee of \$10. Such registration when effected shall be for a period of one year, or a part thereof, expiring on August 31, and may be renewed upon payment of the fee prescribed by this subsection, for additional one-year periods.

(8) **ENFORCEMENT BY ATTORNEY GENERAL.** (a) An action for violation of this section may be prosecuted in any circuit court of this state by the attorney general in the name of the state and in any such action, the attorney general shall exercise all the powers and perform all duties which the district attorney would otherwise be authorized to exercise or to perform therein.

(b) Whenever the attorney general has reason to believe that any charitable organization, professional fund raiser or professional solicitor is operating in violation of this section, or there is employed or is about to be employed in any solicitation or collection of contributions for a charitable organization any device, scheme or artifice to defraud or for obtaining money or property by means of any false pretense, representation or promise, in addition to any other action authorized by law, the department of justice may bring in any circuit court of this state an action in the name of the state against such charitable organization, professional fund raiser or professional solicitor, and any other person who has participated or is about to participate in such solicitation or collection by employing such device, scheme, artifice, false representation or promise, to enjoin such professional fund raiser or professional solicitor, or other person from continuing such solicitation or collection or engaging therein or doing any acts in furtherance thereof, or to cancel any registration statement previously filed with the department.

(9) **DESIGNATION OF THE DEPARTMENT AS AGENT FOR SERVICE OF PROCESS; SERVICE OF PROCESS.** Any charitable organization, professional fund raiser or professional solicitor resident or having his, her or its principal place of business without the state or organized under the laws of another state, that solicits contributions from people in this state, shall be deemed to have irrevocably appointed the secretary as its agent upon whom may be served any process directed to such charitable organization, professional fund raiser, professional solicitor or any partner, principal, officer or director thereof, in any action or proceeding brought by the attorney general under this section. Any such charitable organization, professional fund raiser or professional solicitor may file with the secretary a designation, in terms complying herewith, duly acknowledged, irrevocably appointing the department

as his, her or its agent upon whom may be served any such process. Service of such process upon the secretary shall be made by personally delivering to and leaving with the secretary or the secretary's designee a copy thereof at his or her office and such service shall be sufficient service provided that notice of such service and a copy of such process are forthwith sent by the attorney general to such charitable organization, professional fund raiser or professional solicitor by registered mail with return receipt requested, at his, her or its office as set forth in the registration form required to be filed in the department under subs. (2), (5) and (8), or in default of the filing of such form, at the last address known to the attorney general. Service of such process shall be complete 10 days after the receipt by the attorney general of a return receipt purporting to be signed by the addressee or a person qualified to receive his, her or its registered mail or, if acceptance was refused by the addressee or his, her or its agent, 10 days after the return to the attorney general of the original envelope bearing a notation by the postal authorities that receipt thereof was refused.

(10) **UNAUTHORIZED USE OF NAMES WHEN SOLICITING OR COLLECTING CONTRIBUTIONS.** (a) No person who is required to register pursuant to this section shall use the name of any other person for the purpose of soliciting contributions from persons in this state, without the written consent of such other person.

(b) A person is deemed to have used the name of another person for the purpose of soliciting contributions if such latter person's name is listed on any stationery, advertisement, brochure or correspondence of the charitable organization or his or her name is listed or referred to as one who has contributed to, sponsored or indorsed the charitable organization or its activities.

(c) Whoever violates this section may be fined not exceeding \$1,000 or imprisoned not more than 6 months or both.

**History:** 1973 c. 253; 1977 c. 418; 1979 c. 162 ss. 4, 38 (5), (7), (9); 1979 c. 221, 337; 1981 c. 314 s. 146; 1983 a. 36, 339; 1985 a. 128, 135; 1985 a. 218 s. 22.

Where persons retained to collect funds were paid one dollar for each collection and two dollars per day for automobile use, jury was entitled to find defendant outside the exception under (3) (c). *Blenski v. State*, 73 W (2d) 685, 245 NW (2d) 906.

The League of Women Voters of Wisconsin, Inc., and its local league organizations, fall within the definition of a "charitable organization" as defined in (1) (a) and, unless these organizations are "exempt persons" as described in (3), they must register with and submit annual reports to the department. 60 Atty. Gen. 454.

Department of regulation and licensing does not have the authority to transfer registrations under (7) 61 Atty. Gen. 238.

Maryland law requiring charities to obtain waiver from state if expenses exceed 25% of amount raised denied free speech rights of charities. *Secretary of State of Md. v. J.H. Munson Co.* 467 US 947 (1984).

The regulation of charitable fund raising and spending activities 1975 WLR 1159.

## 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 entitle a blind person to peddle for hire for another person.

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

### 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 board of vocational, technical and adult education.
- (2) Schools operated by the department of health and social services.

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

**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 application fee specified by the department by rule. 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 all of the following:

1. The license periods and application fees for initial licenses and license renewals and reinstatements under par. (a).
2. The requirements for surety bonds under par. (a).
3. The change of ownership fee under par. (d).

**(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

#### 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 application fee specified in s. 440.05 (1). Certificates issued under this section expire on July 1 of odd-numbered years. Renewal applications shall be submitted biennially on a form provided by the department and shall include the renewal fee specified in s.

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440.05 (3) (c) 4 and the penalty for late renewal under s. 440.05 (4) or (5) 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.

**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. 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.

(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 application fee set by the department under s. 440.83. An application shall satisfy all of the following:

(a) *Verified.* The applicant shall verify the application, and if the applicant is a partnership 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.

(b) *Identity of partner or officer.* If the applicant is a partnership or corporation, the application shall identify each partner 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 application fee, 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 application fee and satisfactory evidence of compliance with

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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, the department shall issue to the person a certificate of registration as a mortgage banker.

(6) **EXPIRATION OF REGISTRATION.** Except as provided in sub. (5) (b) 1, a certificate of registration as a loan originator, loan solicitor or mortgage banker expires on December 31 of the even-numbered year after issuance.

(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 renewal fee set by the department under s. 440.83, on or before December 31 of the even-numbered year after issuance of the certificate. 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.

**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 shall be set by the department under s. 440.83 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.

**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 OPERATIONS.** 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, employes 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 under s. 440.83.

(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.

**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 or partner 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 expiration of a period which may not exceed 2 years after the effective date of the revocation.

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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.

**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.

**440.79 Investigation of unregistered practice.** The department may conduct investigations, hold hearings and make findings as to whether a person who is not registered under this subchapter has acted as a mortgage banker, loan originator or loan solicitor. The findings are subject to review as provided in ch. 227. During the review any additional material evidence not previously presented may be considered. If there is reason to believe that a person is acting as a mortgage banker, loan originator or loan solicitor without a certificate of registration under this subchapter and that the continuation of that activity might cause injury to the public interest, the department may, instead of holding a hearing, petition the appropriate circuit court for a temporary restraining order, an injunction or a writ of ne exeat as provided in ch. 813.

*History:* 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.79.

**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.

**440.83 Fees.** Notwithstanding s. 440.05, the department shall, by rule, establish the amount of the fees required under ss. 440.72 (2) and (7), 440.73 (3) and 440.74 (2) (a). The fees shall be based on the approximate cost of the regulation.

*History:* 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.83.

**SUBCHAPTER VII****CRANE GAMES**

**440.85 Offering crane games for play; registration. (1) DEFINITIONS.** In this section:

(a) "Crane game" means an amusement device involving skill, if it rewards the player exclusively with merchandise contained within the amusement device proper and limited to prizes, toys and novelties, each having a wholesale value which is not more than 7 times the cost charged to play the amusement device once or \$5, whichever is less.

(am) "Set up for the purposes of play" means offer a person, for consideration, an opportunity to play a crane game from which the proceeds will be collected by a person other than the player.

(b) "Skill" means, within an opportunity provided for all players fairly to obtain prizes or rewards of merchandise, a player's precision, dexterity or ability to use his or her knowledge which enables him or her to obtain more frequent rewards or prizes than does another less precise, dextrous or knowledgeable player.

**(2) REGISTRATION REQUIRED; FEE.** (a) No person in this state who owns a crane game may set up for the purposes of play, permit a crane game to be set up for the purposes of play or collect the proceeds of a crane game which is set up for the purposes of play unless the person is registered by the department and unless an identification number issued by the department is affixed to each such crane game owned by the person.

(b) Every person specified under par. (a) shall file with the department, on application forms prescribed by the department and signed by the person, all of the following information:

1. The name and address of the person.

2. The location of each crane game which the person intends to set up for the purposes of play or to permit to be set up for the purposes of play.

(c) A nonrefundable fee of \$120 per crane game to which the conditions of par. (b) apply shall accompany the application under par. (b).

(d) Upon receipt of the application and fee under pars. (b) and (c), the department shall, if the department deems the applicant qualified, issue a certificate of registration for the

applicant and an identification number for each crane game for which registration is requested.

(e) The registration issued under par. (d) shall remain in effect unless it is canceled by the department with the advice and consent of the department of justice or unless it is withdrawn by the registered person.

(f) Every person registered under this section shall notify the department of any change in the information required to be furnished by the person under par. (b), within 10 days following the change.

**(3) INVESTIGATION AND ENFORCEMENT.** (a) In response to a written complaint, the department of justice shall conduct an investigation of any person registered under sub. (2) (d). The department of justice may conduct an inspection of a person registered under sub. (2) (d), of the crane game registered to the person or of the premises on which the crane game is played, at any time.

(am) The department of justice may conduct an investigation to determine if a person who owns a crane game sets up for the purposes of play, permits a crane game to be set up for the purposes of play or collects the proceeds of a crane game which is set up for the purposes of play without being registered under sub. (2) (a).

(b) An action for violation of this section may be prosecuted in any circuit court of this state by the attorney general in the name of the state and, in any such action, the attorney general shall exercise all of the powers and perform all duties which the district attorney would otherwise be authorized to exercise or perform.

(c) The department of regulation and licensing shall reimburse the department of justice for the services of the department of justice under this subsection.

**(4) SEIZURE AND SALE.** The department of justice may seize any crane game owned by a person who is convicted under sub. (5) and may sell the crane game in the name of the state. The department of justice and its agents are exempt from all liability to the owner of the crane game for the seizure or sale of the crane game. The department of regulation and licensing shall reimburse the department of justice for the services of the department of justice under this subsection.

**(5) PENALTY.** Any person who violates this section may be required to forfeit not less than \$500 nor more than \$5,000 for each offense. Each day of continued violation constitutes a separate offense. The period shall be measured by using the dates of the offenses which resulted in convictions.

History: 1987 a. 329; 1987 a. 403 s. 181; Stats. 1987 s. 440.85.

### 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.

NOTE: This section is created by 1989 Wis. Act 307, eff. 11-1-91.

#### **440.91 Cemetery authorities and cemetery salespersons.**

(1) Except as provided in sub. (6m), every cemetery authority that pays any commission or other compensation to any person, including its officers, members or stockholders, 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 cemetery lots or mausoleum spaces 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) Registrations under this section expire on December 31 of each even-numbered year. Renewal applications shall be submitted to the department biennially on a form provided by the department and shall include the applicable renewal fee specified in s. 440.05 (3) (L) or (8).

(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



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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.

NOTE: This section is shown as affected by 1989 Wis. Act 307, eff. 11-1-91.

**440.92 Cemetery preneed sellers. (1) REGISTRATION.** (a) Except as authorized under subs. (4) and (9) (a) 1, 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 par. (d).
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) Certificates issued under par. (b) expire on December 31 of each even-numbered year. Renewal applications shall be submitted to the department biennially on a form provided by the department and shall include the renewal fee under par. (d).

(d) The department shall promulgate rules establishing the fees required under pars. (b) and (c). The fees shall be based on the approximate cost of regulation.

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

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(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. 180.791 [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.

NOTE: Ch. 180 was repealed and recreated by 1989 Wis. Act 303. 180.1622 is the successor provision to s. 180.791.

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).

**(8) CEMETERY CONSUMER PROTECTION FUND; ASSESSMENTS AND REIMBURSEMENTS.** (a) In this subsection:

1. "Consumer" means a person who has purchased or intends to purchase cemetery merchandise or services or a cemetery lot or mausoleum space from a cemetery authority, cemetery salesperson or preneed seller.

2. "Fund" means the cemetery consumer protection fund created under s. 25.85.

(b) Beginning on the date determined by the department, but not later than January 1, 1993, the department shall annually assess each preneed seller \$5 for each preneed sales contract that is subject to the trusting requirements under sub. (3) (a) and (b) and that has been entered into by the preneed seller during the 12-month period immediately preceding the date on which the assessment is made. Each preneed seller shall pay the amount of the assessment to the department within 30 days after receiving the assessment, except as provided in sub. (9) (a) 2. The department shall deposit all moneys collected under this paragraph into the fund. Whenever the balance in the fund equals or exceeds \$1,000,000 on the date on which the department would otherwise make an annual assessment, the department may not make that assessment, and may not make any subsequent assessment unless the balance in the fund falls below \$1,000,000. The department may make assessments on different dates in different years in order to maintain a balance of at least \$1,000,000 in the fund, but may not make more than one assessment during any 12-month period.

(c) Any consumer who claims a loss resulting from the illegal, unprofessional or unethical conduct of a cemetery authority, cemetery salesperson or preneed seller may apply to the department for reimbursement for those losses. The department shall review each application submitted, investigate each claim of loss, approve or deny each application and

reimburse each consumer whose application is approved. Reimbursements under this paragraph shall be paid from the appropriation under s. 20.165 (1) (q).

**NOTE:** Sub. (8) (c) first applies to consumer losses resulting from conduct of cemetery authorities, cemetery salespersons or preneed sellers that is engaged in on 1-1-93.

(d) The department shall promulgate rules establishing procedures and requirements for making and collecting annual assessments under par. (b) and for reviewing applications, investigating claims, approving and denying applications and making reimbursements under par. (c).

(e) The state is subrogated to the rights of a claimant who is reimbursed under par. (c) in an amount equal to the amount of the claimant's reimbursement. The attorney general shall make reasonable efforts to recoup the amounts paid under par. (c) from the persons who are liable for the illegal, unprofessional or unethical conduct for which those amounts are paid. A claimant who is reimbursed under par. (c) shall cooperate with the attorney general in any action brought under this paragraph.

**(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, all of the following apply:

1. 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.

2. If the cemetery authority or any employe of the cemetery receives an assessment under sub. (8) during the period for which the certification is effective, the cemetery authority or employe is not required to pay the amount of the assessment.

(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

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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.

History: 1989 a. 307.

NOTE: This section is created by 1989 Wis. Act 307, eff. 11-1-91.

**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 or corporation, any officer, director, trustee 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.

NOTE: This section is created by 1989 Wis. Act 307, eff. 11-1-91.

**440.94 Investigation of unregistered practice.** The department may conduct investigations, hold hearings and make findings as to whether a person has acted as a cemetery authority, cemetery salesperson or preneed seller without a certificate of registration required under this subchapter. The findings shall be subject to review under ch. 227. During such review any additional material evidence presented may be considered. In lieu of holding a hearing, if there is reason to believe that a person is acting as a cemetery authority, cemetery salesperson or preneed seller without a certificate of registration and that the continuation of such activity might cause injury to the public interest, the department may petition the circuit court for a temporary restraining order, an injunction or a writ of ne exeat as provided in ch. 813.

History: 1989 a. 307.

NOTE: This section is created by 1989 Wis. Act 307, eff. 11-1-91.

**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 employes of the cemetery authority for wages and fringe benefits for the period that the employes 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

NOTE: This section is shown as affected by 1989 Wis. Act 307, eff. 11-1-91.

**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.

NOTE: This section is shown as affected by 1989 Wis. Act 307, eff. 11-1-91.