WISCONSIN STATUTES

AND

ADMINISTRATIVE CODE

RELATING TO THE PRACTICE OF REAL ESTATE

OCTOBER 2012

State of Wisconsin
Department of Safety and Professional Services
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CHAPTER 15

STRUCTURE OF THE EXECUTIVE BRANCH

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SUBCHAPTER I

GENERAL PROVISIONS

15.001 Declaration of policy. (1) THREE BRANCHES OF GOVERNMENT. The "republican form of government" guaranteed by the U.S. constitution contemplates the separation of powers within state government among the legislative, the executive and the judicial branches of the government. The legislative branch has the broad objective of determining policies and programs and review of program performance for programs previously authorized, the executive branch carries out the programs and policies and the judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws. It is a traditional concept of American government that the 3 branches are to function separately, without intermingling of authority, except as specifically provided by law.

(2) GOALS OF EXECUTIVE BRANCH ORGANIZATION. (a) As the chief administrative officer of the state, the governor should be provided with the administrative facilities and the authority to carry out the functions of the governor's office efficiently and effectively within the policy limits established by the legislature.

(b) The administrative agencies which comprise the executive branch should be consolidated into a reasonable number of departments and independent agencies consistent with executive capacity to administer effectively at all levels.

(c) The integration of the agencies in the executive branch should be on a functional basis, so that programs can be coordinated.

(d) Each agency in the executive branch should be assigned a name commensurate with the scope of its program responsibilities, and should be integrated into one of the departments or independent agencies of the executive branch as closely as the conflicting goals of administrative integration and responsiveness to the legislature will permit.

(3) GOALS OF CONTINUING REORGANIZATION. Structural reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to changing emphasis or public needs, and should be consistent with the following goals:

(a) The organization of state government should assure its responsiveness to popular control. It is the goal of reorganization to improve legislative policy−making capability and to improve

the administrative capability of the executive to carry out these policies.

(b) The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization through coordination of related programs in function−oriented departments to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

(c) The organization of state government shall assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination of state services and by eliminating overlapping activities.

History: 1991 a. 316.

15.01 Definitions. In this chapter:

(1g) "Affiliated credentialing board" means a part−time body that meets all of the following conditions:

(a) Is attached to an examining board to regulate a profession that does not practice independently of the profession regulated by the examining board or that practices in collaboration with the profession regulated by the examining board.

(b) With the advice of the examining board to which it is attached, sets standards of professional competence and conduct for the profession under the affiliated credentialing board's supervision, reviews the qualifications of prospective new practitioners, grants credentials, takes disciplinary action against credential holders and performs other functions assigned to it by law.

(1r) "Board" means a part−time body functioning as the policy−making unit for a department or independent agency or a part−time body with policy−making or quasi−judicial powers.

(2) "Commission" means a 3−member governing body in charge of a department or independent agency or of a division or other subunit within a department, except for the Wisconsin waterways commission which shall consist of 5 members and the parole commission which shall consist of 8 members. A Wisconsin group created for participation in a continuing interstate body, or the interstate body itself, shall be known as a "commission", but is not a commission for purposes of s. 15.06. The parole commission created under s. 15.145 (1) shall be known as a "commission", but is not a commission for purposes of s. 15.06.

(3) "Committee" means a part−time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment. Because of their temporary nature, committees shall be created by session law rather than by statute.

(4) "Council" means a part−time body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government, except the Milwaukee River revitalization council has the powers and duties specified in s. 23.18, the council on physical disabilities has the powers and duties specified in s. 46.29 (1) and (2), the state council on alcohol and other drug abuse has the powers and duties specified in s. 14.24, and the electronic recording council has the powers and duties specified in s. 706.25 (4).

(5) "Department" means the principal administrative agency within the executive branch of Wisconsin state government, but does not include the independent agencies under subch. III.

(6) "Division," "bureau," "section" and "unit" means the subunits of a department or an independent agency, whether specifically created by law or created by the head of the department or the independent agency for the more economic and efficient administration and operation of the programs assigned to the department or independent agency. The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of "division" under this subsection. The office of the long−term care ombudsman under the board on aging and long−term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subsection.

(7) "Examining board" means a part−time body which sets standards of professional competence and conduct for the profession under its supervision, prepares, conducts and grades the examinations of prospective new practitioners, grants licenses, investigates complaints of alleged unprofessional conduct and performs other functions assigned to it by law. "Examining board" includes the board of nursing.

(8) "Head", in relation to a department, means the constitutional officer, commission, secretary or board in charge of the department. "Head", in relation to an independent agency, means the commission, commissioner or board in charge of the independent agency.

(9) "Independent agency" means an administrative agency within the executive branch created under subch. III.

History: 1977 c. 29, 274; 1979 c. 34; 1983 a. 27, 189, 371, 410, 538; 1985 a. 29, 120, 180; 1987 s. 27, 342, 399; 1989 a. 31, 107, 202; 1991 a. 39, 269, 315; 1993 a. 16, 107, 210, 215; 1995 a. 27 ss. 74 and 9145 (1); 1995 a. 442, 462; 1997 a. 27, 237; 2001 a. 16, 105, 109; 2005 a. 25, 421; 2007 a. 20; 2009 a. 28; 2011 a. 32, 38.

15.02 Offices, departments and independent agencies. The constitutional offices, administrative departments and independent agencies which comprise the executive branch of Wisconsin state government are structured as follows:

(1) SEPARATE CONSTITUTIONAL OFFICES. The governor, lieutenant governor, secretary of state and state treasurer each head a staff to be termed the "office" of the respective constitutional officer.

(2) PRINCIPAL ADMINISTRATIVE UNITS. The principal administrative unit of the executive branch is a "department" or an "independent agency". Each such unit shall bear a title beginning with the words "State of Wisconsin" and continuing with "department of...." or with the name of the independent agency. A department may be headed by a constitutional officer, a secretary, a commission or a board. An independent agency may be headed by a commission, a commissioner or a board.

(3) INTERNAL STRUCTURE. (a) The secretary of each department may, subject to sub. (4), establish the internal structure within the office of secretary so as to best suit the purposes of his or her department. No secretary may authorize the designation of "assistant secretary" as the official position title of any employee of his or her department.

(b) For field operations, departments may establish district or area offices which may cut across divisional lines of responsibility.

(c) For their internal structure, all departments shall adhere to the following standard terms, and independent agencies are encouraged to review their internal structure and to adhere as much as possible to the following standard terms:

1. The principal subunit of the department is the "division". Each division shall be headed by an "administrator". The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of "division" and the executive staff director of the office of justice assistance in the department of administration and the director of credit unions have the meaning of "administrator" under this subdivision.

2. The principal subunit of the division is the "bureau". Each bureau shall be headed by a "director". The office of the long−term care ombudsman under the board on aging and long−term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subdivision.

2m. Notwithstanding subds. 1. and 2., the principal subunit of the department of tourism is the "bureau", which shall be headed by a "director".

3. If further subdivision is necessary, bureaus may be divided into subunits which shall be known as "sections" and which shall

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be headed by "chiefs" and sections may be divided into subunits which shall be known as "units" and which shall be headed by "supervisors".

(4) INTERNAL ORGANIZATION AND ALLOCATION OF FUNCTIONS. The head of each department or independent agency shall, subject to the approval of the governor, establish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department or independent agency to promote economic and efficient administration and operation of the department or independent agency. The head may delegate and redelegate to any officer or employee of the department or independent agency any function vested by law in the head. The governor may delegate the authority to approve selected organizational changes to the head of any department or independent agency.

History: 1971 c. 261; 1973 c. 12; 1975 c. 39; 1977 c. 29; 1979 c. 221; 1987 a. 27, 399; 1993 a. 16, 184, 215, 491; 1995 a. 27 ss. 75, 76, 76c and 9145 (1); 1997 a. 27; 2007 a. 20; 2011 a. 32.

Limits of internal departmental reorganization discussed. 61 Atty. Gen. 306.

15.03 Attachment for limited purposes. Any division, office, commission, council or board attached under this section to a department or independent agency or a specified division thereof shall be a distinct unit of that department, independent agency or specified division. Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests by the office of the commissioner of railroads shall be provided to the department of transportation as required under s. 189.02 (7) and shall be processed and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads.

History: 1981 c. 347; 1983 a. 27; 1993 a. 123; 1999 a. 9.

15.04 Heads of departments and independent agencies; powers and duties. (1) DUTIES. Each head of a department or independent agency shall:

(a) *Supervision.* Except as provided in s. 15.03, plan, direct, coordinate and execute the functions vested in the department or independent agency.

(b) *Budget.* Biennially compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram and activity therein.

(c) *Advisory bodies.* In addition to any councils specifically created by law, create and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties and, if such reimbursement is made, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of such a council or committee shall be paid by the agency which pays the officer's or employee's salary.

(d) *Biennial report.* On or before October 15 of each odd−numbered year, submit to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report on the performance and operations of the department or independent agency during the preceding biennium, and projecting the goals and objectives of the department or independent agency as developed for the program budget report. The secretary of administration may prescribe the format of the report and may require such other information deemed appropriate. Each department or independent agency shall provide a copy of its biennial report to legislators upon request. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require. A department or independent agency may, on or before October 15, submit an annual report prepared by it, in place of the biennial report required under this paragraph, if the submission of the annual reports is approved by the secretary of administration.

(e) *Seal.* Have authority to adopt a seal for the department or independent agency.

(f) *Bonds.* Have authority to require that any officer or employee of the department or independent agency give an official bond under ch. 19, if the secretary of administration agrees that the position held by such officer or employee requires bonding.

(g) *Discrimination review.* In order to determine whether there is any arbitrary discrimination on the basis of race, religion, national origin, sex, marital status or sexual orientation as defined in s. 111.32 (13m), examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes. If the department or agency head finds any such discrimination, he or she shall take remedial action, including making recommendations to the appropriate executive, legislative or administrative authority.

(i) *Records and forms management program.* Establish and maintain a records and forms management program.

(j) *Records and forms officer.* Appoint a records and forms officer, who shall be responsible for compliance by the department or independent agency with all records and forms management laws and rules and who may prevent any form from being put into use.

(k) *Form numbering and filing system.* Establish a numbering and filing system for forms.

(m) *Notice on forms.* See that each form used by the department or independent agency to seek information from municipalities, counties or the public contains on the first page of the form, or in the instructions for completing the form, a conspicuous notice of the authorization for the form, whether or not completing the form is voluntary, if it is not voluntary, the penalty for failure to respond and whether or not any personally identifiable information, as defined under s. 19.62 (5), requested in the form is likely to be used for purposes other than for which it is originally being collected. This paragraph does not apply to state tax forms.

(2) DEPUTY. Each secretary of a department or head of an independent agency under s. 230.08 (2) (L) may appoint a deputy who shall serve at the pleasure of the secretary or agency head outside the classified service. The deputy shall exercise the powers, duties and functions of the secretary or head in the absence of the secretary or head, and shall perform such other duties as the secretary or head prescribes. The adjutant general may appoint 2 deputies as described in s. 321.10 (1) (b) and (c). In this subsection "secretary" includes the attorney general and the state superintendent of public instruction.

(3) DEPUTY APPROVALS. Positions for which appointment is made under sub. (2) may be authorized only under s. 16.505.

History: 1971 c. 125; 1975 c. 94; 1977 c. 196, 273, 418, 447; 1979 c. 221; 1981 c. 112, 350; 1981 c. 391 s. 210; 1983 a. 27, 524; 1985 a. 29; 1985 a. 180 ss. 2 to 4, 30m; 1985 a. 332; 1987 a. 147 s. 25; 1987 a. 186; 1989 a. 248; 1991 a. 39, 189; 1995 a. 27; 1997 a. 73; 2007 a. 200.

15.05 Secretaries. (1) SELECTION. (a) If a department is under the direction and supervision of a secretary, the secretary shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(b) Except as provided in pars. (c) and (d), if a department is under the direction and supervision of a board, the board shall appoint a secretary to serve at the pleasure of the board outside the

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classified service. In such departments, the powers and duties of the board shall be regulatory, advisory and policy−making, and not administrative. All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her under the direction of the board. The secretary, with the approval of the board, shall promulgate rules for administering the department and performing the duties assigned to the department.

(c) The secretary of natural resources shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(d) The secretary of agriculture, trade and consumer protection shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(1m) SECRETARY OF VETERANS AFFAIRS. Before making his or her nomination for the secretary of veterans affairs, the governor shall personally consult with the presiding officers of at least 6 Wisconsin veterans organizations.

(3) EXECUTIVE ASSISTANT. Each secretary may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the secretary prescribes. In this subsection, "secretary" includes the attorney general, the adjutant general, the director of the technical college system and the state superintendent of public instruction.

(3m) FIELD DISTRICT OR FIELD AREA DIRECTORS. Each secretary may appoint a director under the classified service for each district or area office established in his or her department under s. 15.02 (3) (b).

(4) OFFICIAL OATH. Each secretary shall take and file the official oath prior to assuming office.

(5) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub. (3) may be authorized only under s. 16.505.

History: 1973 c. 90; 1977 c. 4, 196; 1985 a. 18; 1985 a. 332 s. 251 (3); 1989 a. 31, 169; 1993 a. 399; 1995 a. 27; 2011 a. 36.

15.06 Commissions and commissioners. (1) SELECTION OF MEMBERS. (a) Except as otherwise provided in this subsection, the members of commissions shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 6−year terms expiring on March 1 of the odd−numbered years.

(ag) Members of the Wisconsin waterways commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 5−year terms.

(ar) The commissioner of railroads shall be nominated by the governor, and with the advice and consent of the senate appointed, for a 6−year term expiring on March 1 of an odd−numbered year.

(b) The commissioner of insurance shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor. The governor may remove from office the commissioner of insurance who was appointed for a fixed term before August 1, 1987.

(2) SELECTION OF OFFICERS. Each commission may annually elect officers other than a chairperson from among its members as its work requires. Any officer may be reappointed or reelected. At the time of making new nominations to commissions, the governor shall designate a member or nominee of each commission to serve as the commission's chairperson for a 2−year term expiring on March 1 of the odd−numbered year except that the labor and industry review commission shall elect one of its members to serve as the commission's chairperson for a 2−year term expiring on March 1 of the odd−numbered year.

(3) FULL−TIME OFFICES. (a) A commissioner may not hold any other office or position of profit or pursue any other business or vocation, but shall devote his or her entire time to the duties of his or her office. This paragraph does not apply to:

1. The commissioner of insurance.

3. The members of the Wisconsin waterways commission.

(b) The commissioner of insurance shall not engage in any other occupation, business or activity that is in any way inconsistent with the performance of the duties of the commissioner of insurance, nor shall the commissioner hold any other public office.

(4) CHAIRPERSON; ADMINISTRATIVE DUTIES. The administrative duties of each commission shall be vested in its chairperson, to be administered by the chairperson under the statutes and rules of the commission and subject to the policies established by the commission.

(4m) EXECUTIVE ASSISTANT. Each commission chairperson under s. 230.08 (2) (m) and each commissioner of the public service commission may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the chairperson or commissioner prescribes.

(5) FREQUENCY OF MEETINGS; PLACE. Every commission shall meet on the call of the chairperson or a majority of its members. Every commission shall maintain its offices in Madison, but may meet or hold hearings at such other locations as will best serve the citizens of this state.

(6) QUORUM. A majority of the membership of a commission constitutes a quorum to do business, except that vacancies shall not prevent a commission from doing business. This subsection does not apply to the parole commission.

(7) REPORTS. Every commission attached to a department shall submit to the head of the department, upon request of that person not more often than annually, a report on the operation of the commission.

(8) OFFICIAL OATH. Every commissioner shall take and file the official oath prior to assuming office.

(9) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub. (4m) may be authorized only under s. 16.505.

History: 1971 c. 193, 307; 1977 c. 29, 196, 274; 1981 c. 347; 1983 a. 27, 371, 410, 538; 1985 a. 29; 1987 a. 27, 403; 1989 a. 31; 1991 a. 39, 269, 316; 1993 a. 16, 123; 1995 a. 27; 1997 a. 27; 2001 a. 16; 2003 a. 33; 2005, a. 149; 2009 a. 28; 2011 a. 38.

A single member of the personnel commission is empowered to act as the commission when 2 of the 3 commission positions are vacant. 68 Atty. Gen. 323.

A commissioner designated as chairperson of the commission under sub. (2) is not appointed to a new position, and Art. IV, s. 26, precludes a salary increase based on that designation. 76 Atty. Gen. 52.

Sub. (3) (a) prohibits a commissioner from pursuing business interests that would prevent properly fulfilling the duties of the office. 77 Atty. Gen. 36.

15.07 Boards. (1) SELECTION OF MEMBERS. (a) If a department or independent agency is under the direction and supervision of a board, the members of the board, other than the members serving on the board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve for terms prescribed by law, except:

1. Members of the higher educational aids board shall be appointed by the governor without senate confirmation.

2. Members of the government accountability board shall be nominated by the governor, and with the advice and consent of two−thirds of the members of the senate present and voting shall be appointed, to serve for terms prescribed by law.

3. Members of the employee trust funds board appointed or elected under s. 15.16 (1) (a), (b), (d) and (f) shall be appointed or elected as provided in that section.

4. Members of the investment board appointed under s. 15.76 (3) shall be appointed as provided in that section.

5. The members of the educational communications board appointed under s. 15.57 (5) and (7) shall be appointed as provided in that section.

(b) For each board not covered under par. (a), the governor shall appoint the members of the board, other than the members serving on the board because of holding another office or position and except as otherwise provided, for terms prescribed by law

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except that all members of the following boards, or all members of the following boards specified in this paragraph, other than the members serving on a board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, for terms provided by law:

1. Banking review board.

2. College savings program board.

3. Credit union review board.

5. Savings institutions review board.

9. Board on aging and long−term care.

10. Land and water conservation board.

11. Waste facility siting board.

12. Prison industries board.

14. Deferred compensation board.

15. The 3 members of the lower Wisconsin state riverway board appointed under s. 15.445 (3) (b) 7.

15m. The members of the state fair park board appointed under s. 15.445 (4) (a) 3. to 5.

17. Real estate appraisers board.

18m. Board of veterans affairs.

19m. Auctioneer board.

20. The 3 members of the Kickapoo reserve management board appointed under s. 15.445 (2) (b) 3.

23. Cemetery board.

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

(cm) The term of one member of the government accountability board shall expire on each May 1. The terms of the 3 members of the land and water conservation board appointed under s. 15.135 (4) (b) 2. shall expire on January 1. The term of the member of the land and water conservation board appointed under s. 15.135 (4) (b) 2m. shall expire on May 1 of an even−numbered year. The terms of the appraiser members of the real estate appraisers board and the terms of the auctioneer and auction company representative members of the auctioneer board shall expire on May 1 in an even−numbered year. The terms of the members of the cemetery board shall expire on July 1 in an even−numbered year. The term of the student member of the Board of Regents of the University of Wisconsin System who is at least 24 years old shall expire on May 1 of every even−numbered year.

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

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

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

(b) The chairperson of the governmental accountability board shall be chosen by lot by the current chairperson of the board at the first meeting of the board in January of each year.

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

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

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

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

(h) The chairperson of the state fair park board shall be designated annually by the governor from among the members appointed under s. 15.445 (4) (a) 3., 4. and 5.

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

(L) The governor shall serve as chairperson of the information technology management board and the secretary of administration or his or her designee shall serve as secretary of that board.

(m) The representative of the department of administration shall serve as chairperson of the incorporation review board.

(n) The member appointed under s. 15.345 (6) (a) shall serve as chairperson of the managed forest land board.

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

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

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

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

4. The information technology management board shall meet at least 4 times each year and may meet at other times on the call of the chairperson.

5. The incorporation review board shall meet on the call of the chairperson or a majority of the board's members.

6. The cemetery board shall meet at least 4 times each year.

(4) QUORUM. A majority of the membership of a board constitutes a quorum to do business and, unless a more restrictive provision is adopted by the board, a majority of a quorum may act in any matter within the jurisdiction of the board. This subsection does not apply to actions of the government accountability board or the school district boundary appeal board as provided in ss. 5.05 (1e) and 117.05 (2) (a).

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

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

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

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

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

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

(f) Members of the teachers retirement board, appointive members of the Wisconsin retirement board, appointive members of the group insurance board, members of the deferred compensa-

tion board and members of the employee trust funds board, $25 per day.

(g) Members of the savings institutions review board, $10 per day.

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

(i) Members of the educational approval board, $25 per day.

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

(k) Members of the board for people with developmental disabilities, $50 per day.

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

(m) Members of the government accountability board, a per diem equal to the amount prescribed under s. 753.075 (3) (a) for reserve judges sitting in circuit court.

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

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

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

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

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

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

(z) Members of the cemetery board, $25 per day.

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

(c) *Board for people with developmental disabilities.* A member of the board for people with developmental disabilities shall be reimbursed under sub. (5) (k) only if the member attends a meeting or event of the board and all of the following apply:

1. The member's official duties related to the meeting or event occupy at least 4 hours in one day.

2. Due to the member's official duties related to the meeting or event the member forfeits wages from other employment or the member is not otherwise employed for wages.

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

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

History: 1971 c. 100 s. 23; 1971 c. 125, 261, 270, 323; 1973 c. 90, 156, 299, 334; 1975 c. 39, 41, 422; 1977 c. 29 ss. 24, 26, 1650m (3); 1977 c. 203, 277, 418, 427; 1979 c. 34, 110, 221, 346; 1981 c. 20, 62, 94, 96, 156, 314, 346, 374, 391; 1983 a. 27, 282, 403; 1985 a. 20, 29, 316; 1987 a. 27, 119, 142, 354, 399, 403; 1989 a. 31, 102, 114, 219, 299, 340; 1991 a. 25, 39, 116, 221, 269, 316; 1993 a. 16, 75, 102, 184, 349, 399, 490; 1995 a. 27, 216, 247; 1997 a. 27 ss. 43 to 48m, 9456 (3m); 1999 a. 9, 44, 181, 197; 2001 a. 16; 2003 a. 33 ss. 79 to 85, 2811; 2003 a. 48 ss. 10, 11; 2003 a. 171; 2003 a. 206 s. 23; 2005 a. 25 ss. 41g to 45m, 2493; 2005 a. 76, 228, 253; 2007 a. 1, 20, 97, 109; 2009 a. 28; 2011 a. 10, 32.

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

15.08 Examining boards and councils. (1) SELECTION OF MEMBERS. All members of examining boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an examining board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS. (a) Public members appointed under s. 15.405 or 15.407 shall have all the powers and duties of other members except they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.405 or 15.407 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the board, examining board or examining council to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the chiropractic examining board, the dentistry examining board, the hearing and speech examining board, the medical examining board, the physical therapy examining board, perfusionists examining council, respiratory care practitioners examining council and council on physician assistants, the board of nursing, the nursing home administrator examining board, the veterinary examining board, the optometry examining board, the pharmacy examining board, the marriage and family therapy, professional counseling, and social work examining board, the psychology examining board, and the radiography examining board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(c) The membership of each examining board and examining council created in the department of safety and professional services after June 1, 1975, shall be increased by one member who shall be a public member appointed to serve for the same term served by the other members of such examining board or examining council, unless the act relating to the creation of such examining board or examining council provides that 2 or more public members shall be appointed to such examining board or examining council.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every examining board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS. (a) Every examining board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The medical examining board shall meet at least 12 times annually.

(c) The hearing and speech examining board shall meet at least once every 3 months.

(4) QUORUM. (a) A majority of the membership of an examining board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the examining board.

(b) Notwithstanding par. (a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two−thirds of the voting membership of the examining board.

(5) GENERAL POWERS. Each examining board:

(a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not

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inconsistent with the law relating to the particular trade or profession.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the examining board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each examining board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each examining board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an examining board shall, unless the member is a full−time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance of examining board duties. Each member of an examining board shall be reimbursed for the actual and necessary expenses incurred in the performance of examining board duties.

(8) OFFICIAL OATH. Every member of an examining board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every examining board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the examining board.

(10) SEAL. Every examining board may adopt a seal.

History: 1971 c. 40; 1975 c. 86, 199; 1977 c. 418; 1979 c. 32; 1979 c. 34 ss. 32e to 32s, 2102 (45) (a); 1979 c. 221; 1981 c. 94; 1983 a. 403, 524; 1985 a. 332, 340; 1987 a. 399; 1989 a. 229, 316, 359; 1991 a. 39, 160, 316; 1993 a. 105, 107, 184, 490; 1995 a. 245; 1997 a. 175; 1999 a. 180; 2001 a. 80, 89, 105; 2009 a. 106, 149; 2011 a. 32, 258.

Selection and terms of officers of regulatory and licensing boards are discussed. 75 Atty. Gen. 247 (1986).

15.085 Affiliated credentialing boards. (1) SELECTION OF MEMBERS. All members of affiliated credentialing boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an affiliated credentialing board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS. (a) Public members appointed under s. 15.406 shall have all of the powers and duties of other members except that they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.406 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the affiliated credentialing board to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the podiatry affiliated credentialing board or occupational therapists affiliated credentialing board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every affiliated credentialing board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS. (a) Every affiliated credentialing board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The chairperson of an affiliated credentialing board shall meet at least once every 6 months with the examining board to which the affiliated credentialing board is attached to consider all matters of joint interest.

(4) QUORUM. (a) A majority of the membership of an affiliated credentialing board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the affiliated credentialing board.

(b) Notwithstanding par. (a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two−thirds of the membership of the affiliated credentialing board.

(5) GENERAL POWERS. Each affiliated credentialing board:

(a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. In addition to any other procedure under ch. 227 relating to the promulgation of rules, when promulgating a rule, other than an emergency rule under s. 227.24, an affiliated credentialing board shall do all of the following:

1. Submit the proposed rule to the examining board to which the affiliated credentialing board is attached. The proposed rule shall be submitted under this subdivision at least 60 days before the proposed rule is submitted to the legislative council staff under s. 227.15 (1).

2. Consider any comments on a proposed rule made by the examining board to which the affiliated credentialing board is attached, if the examining board submits the comments to the affiliated credentialing board within 30 days after a public hearing on the proposed rule under s. 227.18 or, if no hearing is held, within 30 days after the proposed rule is published under s. 227.16 (2) (e).

3. Include, in the report submitted to the legislature under s. 227.19 (2), any comments on the proposed rule submitted by the examining board under subd. 2. and the affiliated credentialing board's responses to those comments.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the affiliated credentialing board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each affiliated credentialing board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each affiliated credentialing board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an affiliated credentialing board shall, unless the member is a full−time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance of affiliated credentialing board duties. Each member of an affiliated credentialing board shall be reimbursed for the actual and necessary expenses incurred in the performance of affiliated credentialing board duties.

(8) OFFICIAL OATH. Every member of an affiliated credentialing board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every affiliated credentialing board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the affiliated credentialing board.

(10) SEAL. Every affiliated credentialing board may adopt a seal.

History: 1993 a. 107; 1997 a. 175; 1999 a. 180; 2009 a. 113, 149; 2011 a. 258.

15.09 Councils. (1) SELECTION OF MEMBERS. (a) Unless otherwise provided by law, the governor shall appoint the members of councils for terms prescribed by law. Except as provided in par. (b), fixed terms shall expire on July 1 and shall, if the term is for an even number of years, expire in an odd−numbered year.

(b) The terms of the members of the council on recycling shall expire as specified under s. 15.347 (17) (c).

(2) SELECTION OF OFFICERS. Unless otherwise provided by law, at its first meeting in each year every council shall elect a chairperson, vice chairperson and secretary from among its members. Any officer may be reelected for successive terms. For any council created under the general authority of s. 15.04 (1) (c), the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which such council is created shall designate an employee of the department or independent agency to serve as secretary of the council and to be a voting member thereof.

(3) LOCATION AND FREQUENCY OF MEETINGS. Unless otherwise provided by law, every council shall meet at least annually and shall also meet on the call of the head of the department or independent agency in which it is created, and may meet at other times on the call of the chairperson or a majority of its members. A council shall meet at such locations as may be determined by it unless the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which it is created determines a specific meeting place.

(4) QUORUM. Except as otherwise expressly provided, a majority of the membership of a council constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the council.

(5) POWERS AND DUTIES. Unless otherwise provided by law, a council shall advise the head of the department or independent agency in which it is created and shall function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

(6) REIMBURSEMENT FOR EXPENSES. Members of a council shall not be compensated for their services, but, except as otherwise provided in this subsection, members of councils created by statute shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an elective or appointive officer or employee of this state who represents an agency as a member of a council to be paid by the agency which pays his or her salary. Members of the agricultural education and workforce development council may not be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(7) REPORTS. Unless a different provision is made by law for transmittal or publication of a report, every council created in a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the council.

(8) OFFICIAL OATH. Each member of a council shall take and file the official oath prior to assuming office.

History: 1971 c. 211; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 34, 346; 1983 a. 27, 388, 410; 1985 a. 84; 1989 a. 335; 1991 a. 39, 189; 1993 a. 184; 2003 a. 260; 2007 a. 223; 2009 a. 2; 2011 a. 233.

SUBCHAPTER II

DEPARTMENTS

15.10 Department of administration; creation. There is created a department of administration under the direction and supervision of the secretary of administration. The secretary of administration shall be appointed on the basis of recognized interest, administrative and executive ability, training and experience in and knowledge of problems and needs in the field of general administration.

15.103 Same; specified divisions. (1) DIVISION OF HEARINGS AND APPEALS. There is created a division of hearings and appeals which is attached to the department of administration under s. 15.03. The administrator of the division shall be appointed by the secretary of administration in the classified service.

(1g) DIVISION OF LEGAL SERVICES. There is created in the department of administration a division of legal services.

(1m) DIVISION OF GAMING. There is created in the department of administration a division of gaming.

(4) DIVISION OF TRUST LANDS AND INVESTMENTS. There is created a division of trust lands and investments which is attached to the department of administration under s. 15.03. This division is under the direction and supervision of the board of commissioners of public lands.

(5) DIVISION OF ENTERPRISE TECHNOLOGY. There is created in the department of administration a division of enterprise technology.

History: 1977 c. 170, 418; 1979 c. 361 s. 15; 1981 c. 121; 1983 a. 27; 1989 a. 31, 107; 1991 a. 39; 1993 a. 16 s. 55m; 1995 a. 27; 1997 a. 27 ss. 26, 49; 2001 a. 16; 2003 a. 33; 2009 a. 28; 2011 a. 32.

15.105 Same; attached boards, commissions, and offices. (1) TAX APPEALS COMMISSION. There is created a tax appeals commission which is attached to the department of administration under s. 15.03. Members shall be appointed solely on the basis of fitness to perform the duties of their office, and shall be experienced in tax matters. The commission shall meet at the call of the chairperson or at the call of a majority of its members. The chairperson shall not serve on or under any committee of a political party. The commission shall include but not be limited to a small claims division.

(2) CLAIMS BOARD. There is created a claims board, attached to the department of administration under s. 15.03, consisting of a representative of the office of the governor designated by the governor, a representative of the department of administration designated by the secretary of administration, a representative of the department of justice designated by the attorney general and the chairpersons of the senate and assembly committees on finance or their designees appointed at the commencement of each legislative biennium from the membership of their respective committees on finance.

(3) DEPOSITORY SELECTION BOARD. There is created a depository selection board which is attached to the department of administration under s. 15.03. The depository selection board shall consist of the state treasurer, the secretary of administration, and the secretary of revenue or their designees.

(4) PUBLIC RECORDS BOARD. There is created a public records board which is attached to the department of administration under s. 15.03. The public records board shall consist of the governor, the director of the historical society, the attorney general, the state auditor, and the director of the legislative council staff, or their designated representatives, and a representative of the small business community, a representative of a school board or the governing body of a municipality, as defined in s. 281.59 (1) (c), and one other member.

(5) STATE CAPITOL AND EXECUTIVE RESIDENCE BOARD. There is created a state capitol and executive residence board, attached to the department of administration under s. 15.03, consisting of the secretary of administration or the secretary's designee, the director of the historical society or the director's designee, an architect or engineer employed by the department of administration appointed by the secretary of administration, 3 senators and 3 representatives to the assembly appointed as are the members of standing committees in their respective houses, and 7 citizen members appointed for staggered 6−year terms of whom at least

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2 shall be architects registered under ch. 443, one shall be a landscape architect registered under ch. 443 and 3 shall be interior designers.

(8) BOARD FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES. (ag) There is created a board for people with developmental disabilities, attached to the department of administration under s. 15.03.

(am) Subject to par. (cm), the board shall consist of the following state residents, appointed for staggered 4−year terms, who shall be representative of all geographic areas of the state and reflect the state's diversity with respect to race and ethnicity:

1. A representative of each of the relevant agencies of the state that administer federal funds related to individuals with disabilities, to be designated by:

a. The secretary of workforce development.

b. The secretary of health services.

c. The state superintendent of public instruction.

2. Representatives of individuals with developmental disabilities, who are any of the following:

a. Individuals with developmental disabilities.

b. Parents or guardians of children with developmental disabilities.

c. Immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves.

3. A representative of each of the following who has sufficient authority to engage in policy planning and implementation for the entity represented:

a. The entity in this state that is designated by the federal department of health and human services as a university center for excellence in developmental disabilities education, research, and services.

b. The state protection and advocacy system under s. 51.62, designated by the director of the state protection and advocacy agency under s. 51.62 (2).

c. Each of the local governmental agencies, nongovernmental agencies, and private nonprofit groups that are concerned with services for individuals with developmental disabilities.

(bm) A member specified in par. (am) 1. or 3. shall recuse himself or herself from any discussion by the board of grants or contracts for which the member's department, agency, program, or group is a grantee, contractor, or applicant and may not vote on a matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest.

(cm) 1. At least 60% of the membership of the board shall be individuals specified under par. (am) 2. who are not managing employees, as defined under 42 USC 1320a−5 (b), of an entity, or employees of a state agency, that receives federal funds for the developmentally disabled or uses the funds to provide services to persons with developmental disabilities. Of those individuals, one−third shall be individuals specified under par. (am) 2. a., one−third shall be individuals specified under par. (am) 2. b. or c., and one−third shall be individuals specified under par. (am) 2. a., b., or c.

2. At least one of the individuals described under subd. 1. shall be an individual with a developmental disability who resides in or previously resided in an institution, including a state center for the developmentally disabled, or the immediate relative or guardian of such an individual. The requirement under this subdivision does not apply if such an individual does not reside in this state.

(10) BOARD ON AGING AND LONG−TERM CARE. There is created a board on aging and long−term care, attached to the department of administration under s. 15.03. The board shall consist of 7 members appointed for staggered 5−year terms. Members shall have demonstrated a continuing interest in the problems of providing long−term care for the aged or disabled. At least 4 members shall be public members with no interest in or affiliation with any nursing home.

(12) WASTE FACILITY SITING BOARD. (a) *Creation; membership.* There is created a waste facility siting board, attached to the department of administration under s. 15.03, consisting of the following members:

1. The secretary of transportation, the secretary of agriculture, trade and consumer protection and the secretary of safety and professional services or their formally appointed designees.

2. Two town officials.

3. One county official.

(b) *Terms.* The town officials and the county official shall be appointed for staggered 3−year terms.

(c) *Vacancies.* If a town or county official who is a member leaves office while serving on the board, the member's position on the board is considered vacant until a successor is appointed under s. 15.07 (1) (b).

(d) *Recommendations.* In appointing the town officials and county official to be members under this subsection, the governor shall consider recommendations made by the Wisconsin towns association and the Wisconsin Counties Association if these recommendations are submitted within 60 days after a town official or county official position on the board becomes vacant.

(e) *Executive director.* The board shall appoint an executive director under or outside of the classified service.

(f) *Assistance.* The board may contract with any state agency to provide assistance necessary for the board to fulfill its duties.

(19) OFFICE OF JUSTICE ASSISTANCE. There is created an office of justice assistance which is attached to the department of administration under s. 15.03. The executive staff director of the office shall be appointed by the governor to serve at the pleasure of the governor.

(22) STATE USE BOARD. There is created a state use board which is attached to the department of administration under s. 15.03. The board shall consist of 8 members appointed to serve for 4−year terms, including a representative of the department of administration; a representative of the subunit of the department of health services which administers mental health laws; a representative of the subunit of the department of workforce development which administers vocational rehabilitation laws; 2 representatives of private businesses, one of whom shall represent a small business; one representative of a work center, as defined in s. 16.752; and one member who does not represent any of the foregoing entities. A member vacates his or her office if the member loses the status upon which his or her appointment is based. In this subsection, "small business" means an independently owned and operated business which is not dominant in its field and which has had less than $2,500,000 in gross annual sales for each of the 2 previous calendar years or has 25 or fewer employees.

(23) INCORPORATION REVIEW BOARD. (a) There is created an incorporation review board attached to the department of administration under s. 15.03. The board shall consist of the secretary of administration or his or her designee, 2 members appointed by the Wisconsin Towns Association, one member appointed by the League of Wisconsin Municipalities, and one member appointed by the Wisconsin Alliance of Cities. Members serve at the pleasure of the appointing authority. All members of the board, other than the secretary of administration or his or her designee, serve only in an advisory capacity.

(b) No member of the incorporation review board may review a petition referred to the board under s. 66.0203 (8) (b) if any of the following applies:

1. The member owns property in, or resides in, the town that is the subject of the incorporation petition.

2. The member owns property in, or resides in, a city or village that is contiguous to the town that is the subject of the incorporation petition.

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(c) If the secretary of administration is affected by par. (b), he or she shall appoint a designee who is not so affected to review the petition. If any other member of the board is affected by par. (b), that person's appointing authority shall remove that person from the board and shall appoint another member to review the petition who is not so affected.

(24) NATIONAL AND COMMUNITY SERVICE BOARD. (a) *Creation.* There is created a national and community service board which is attached to the department of administration under s. 15.03.

(b) *Membership.* The national and community service board shall consist of the voting members described in par. (c) and the nonvoting members described in par. (d), appointed for 3−year terms.

(c) *Voting members.* The national and community service board shall include as voting members the following members:

1. At least one member who has expertise in the educational, training and developmental needs of youth, particularly of disadvantaged youth.

2. At least one member who has experience in promoting voluntarism among older adults.

3. At least one member who is a representative of private nonprofit organizations that are representative of a community, or a significant segment of a community, and that are engaged in meeting the human, educational, environmental or public safety needs of that community.

4. The state superintendent of public instruction or his or her designee.

4m. The secretary of administration or his or her designee.

5. At least one member who is a representative of a school board or of a county, city, village or town government.

6. At least one member who is a representative of organized labor.

7. At least one member who is a representative of the business community.

8. At least one member who is at least 16 years of age and not more than 25 years of age and who is a participant or a supervisor in a national service program described in 42 USC 12572 (a).

9. At least one member who is a representative of a national service program described in 42 USC 12572 (a).

10. If less than 16 members are appointed under subds. 1. to 9., a sufficient number of members to bring the total number of voting members to 16.

(d) *Nonvoting members.* In addition to the voting members specified in par. (c), the national and community service board shall include as a nonvoting member the state representative of the corporation for national and community service designated under 42 USC 12651f, and may include as nonvoting members such representatives of state agencies providing community services, youth services, educational services, social services, services for the aging and job training programs as the governor may appoint.

(e) *Membership limitations.* No more than 4 of the voting members of the national and community service board may be state officers or employees. No more than 9 of the voting members of the national and community service board may belong to the same political party. In appointing members to the national and community service board, the governor shall ensure, to the maximum extent practicable, that the membership of the board is diverse with respect to race, national origin, age, sex and disability.

(25m) COLLEGE SAVINGS PROGRAM BOARD. There is created a college savings program board that is attached to the department of administration under s. 15.03 and that consists of all of the following members:

(a) The secretary of administration or his or her designee.

(b) The president of the board of regents of the University of Wisconsin System or his or her designee.

(c) The president of the Wisconsin Association of Independent Colleges and Universities or his or her designee.

(d) The chairperson of the investment board or his or her designee.

(e) The president of the technical college system board or his or her designee.

(f) Six other members, appointed for 4−year terms.

(26) VOLUNTEER FIRE FIGHTER AND EMERGENCY MEDICAL TECHNICIAN SERVICE AWARD BOARD. (a) There is created a volunteer fire fighter and emergency medical technician service award board that is attached to the department of administration under s. 15.03. The board shall consist of the secretary of administration or his or her designee and the following members appointed for 3−year terms:

1. One member who is volunteer fire fighter and who is a member of a statewide organization that represents fire chiefs.

2. One member who is volunteer fire fighter and who is a member of a statewide organization that represents volunteer fire fighters.

3. One member who is a volunteer emergency medical technician

4. Three members who represent municipalities that operate volunteer fire departments or that contract with volunteer fire companies organized under ch. 181 or 213.

5. One member who has experience in financial planning.

(b) In appointing the members under par. (a), the governor shall seek to appoint members from different regions of the state and from municipalities of different sizes.

(28) INFORMATION TECHNOLOGY MANAGEMENT BOARD. There is created an information technology management board that is attached to the department of administration under s. 15.03. The board shall consist of the governor, the cochairpersons of the joint committee on information policy and technology or a member of the legislature from the same house as a cochairperson designated by that cochairperson, one member of the minority party in each house of the legislature, appointed in the same manner as members of standing committees are appointed, 2 heads of departments or independent agencies appointed to serve at the pleasure of the governor, 2 other members appointed to serve for 4−year terms, and the secretary of administration or his or her designee.

(29) OFFICE OF STATE EMPLOYMENT RELATIONS. (a) *Creation.* There is created an office of state employment relations which is attached to the department of administration under s. 15.03 under the direction and supervision of a director. The director shall serve at the pleasure of the governor.

(b) *Same; specified divisions.* 1. 'Division of merit recruitment and selection.' There is created in the office of state employment relations a division of merit recruitment and selection. The administrator of the division of merit recruitment and selection shall be nominated by the governor, and with the advice and consent of the senate appointed for a 5−year term, under the unclassified service from a register of at least 5 names certified to the governor by the director of the office of state employment relations. The director of the office of state employment relations shall prepare and conduct an examination for the position of administrator according to the requirements for classified positions under subch. II of ch. 230. The administrator of the division may be renominated by the governor, and with the advice and consent of the senate reappointed.

(c) *Same; attached board.* 1. 'State employees suggestion board.' There is created in the office of state employment relations a state employees suggestion board consisting of 3 persons, at least one of whom shall be a state officer or employee, appointed for 4−year terms.

(d) *Same; council.* 1. 'Council on affirmative action.' a. There is created in the office of state employment relations a council on affirmative action consisting of 15 members appointed for 3−year terms. A majority of members shall be public members

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and a majority of members shall be minority persons, women, or persons with disabilities, appointed with consideration to the appropriate representation of each group.

b. The president of the senate, the speaker of the assembly, the minority leader of the senate, and the minority leader of the assembly each shall appoint one member and the remaining members shall be appointed by the governor.

(32) OFFICE OF BUSINESS DEVELOPMENT. There is created an office of business development which is attached to the department of administration under s. 15.03. The office shall be under the direction and supervision of a director who shall be appointed by the governor to serve at his or her pleasure.

(33) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small business regulatory review board, attached to the department of administration under s. 15.03. The board shall consist of 7 representatives of small businesses, as defined in s. 227.114 (1), who shall be appointed for 3−year terms, and the chairpersons of one senate and one assembly committee concerned with small businesses, appointed as are members of standing committees.

History: 1971 c. 40, 164, 270; 1973 c. 90, 333; 1975 c. 397; 1977 c. 29 s. 1649; 1977 c. 196 ss. 9, 10; 1977 c. 325, 392, 396, 418, 447; 1981 c. 20, 62, 182, 350, 374; 1983 a. 27, 91; 1983 a. 192 s. 303 (7); 1983 a. 371; 1985 a. 29 ss. 68 to 70, 87, 3202 (27); 1985 a. 180 s. 30m; 1987 a. 27, 142; 1987 a. 147 s. 25; 1987 a. 204, 342; 1989 a. 31, 56, 107, 345; 1991 a. 212, 269; 1993 a. 75, 246, 349, 437, 465, 491; 1995 a. 27 ss. 79 to 118p, 9116 (5), 9126 (19); 1995 a. 221, 225; 1997 a. 3; 1997 a. 27 ss. 51 to 53, 9456 (3m); 1997 a. 247; 1999 a. 9, 105, 185; 2001 a. 16 ss. 139, 174, 109; 2003 a. 33 ss. 87s to 97d, 115, 2811, 9160; 2003 a. 48 ss. 10, 11; 2003 a. 171; 2003 a. 206 s. 23; 2005 a. 25 ss. 47, 48, 2493; 2005 a. 253; 2007 a. 20 ss. 35 to 35p, 52b, 9121 (6) (a); 2011 a. 32 ss. 74, 92 to 96, 109; 2011 a. 46 s. 1.

15.107 Same; councils. (2) COUNCIL ON SMALL BUSINESS, VETERAN−OWNED BUSINESS AND MINORITY BUSINESS OPPORTUNITIES. There is created in the department of administration a council on small business, veteran−owned business and minority business opportunities consisting of 13 members, appointed by the secretary of administration for 3−year terms, with representation as follows: at least 2 shall be owners or employees of small businesses at least 51% owned by one or more members of a racial minority group; at least one shall be an owner or employee of a small business at least 51% owned by one or more handicapped persons; at least one shall be an owner or employee of a small business operated on a nonprofit basis for the rehabilitation of disabled persons; at least 2 shall be owners or employees of veteran−owned businesses, as defined in s. 16.75 (4) (d); at least one shall be a representative of the department of safety and professional services; and at least one shall be a consumer member. No member may serve for more than 2 consecutive full terms. The secretary of administration, or a department employee who is the secretary's designee, shall serve as the council's nonvoting secretary.

(5) ACID DEPOSITION RESEARCH COUNCIL. (a) There is created in the department of administration an acid deposition research council consisting of the following members:

1. The secretary of administration or his or her designee.

2. The chairperson of the public service commission or his or her designee.

3. The secretary of natural resources or his or her designee.

4. A representative of the University of Wisconsin System appointed by the secretary of administration.

5. A representative of a major utility, as defined under s. 285.41 (1) (f), appointed by the secretary of administration.

6. A representative of an industry which is a large source, as defined under s. 285.45 (1) (a), appointed by the secretary of administration.

7. A representative of an environmental organization in this state, appointed by the secretary of administration.

(b) Members of the council appointed under par. (a) 4. to 7. shall serve at the pleasure of the secretary.

(c) The council shall perform the functions specified under s. 16.02.

(6) ELECTRONIC RECORDING COUNCIL. (a) There is created an electronic recording council which is attached to the department of administration under s. 15.03.

(b) The council shall be composed of the following members appointed for 3−year terms:

1. Four members who are registers of deeds in this state, except that one or more members under this subdivision may be persons who are not currently registers of deeds but who held that office for at least 5 years.

2. One member who represents an association of title insurance companies.

3. One member who represents an association of bankers.

4. One member who represents attorneys who practice real property law.

(11) WOMEN'S COUNCIL. (a) *Creation.* There is created a women's council which is attached to the department of administration under s. 15.03. The council shall consist of 15 members. Except as provided in par. (c), all members shall be appointed for staggered 2−year terms.

(b) *Membership.* The council consists of the following members:

1. The governor, or his or her designee.

2. Six public members appointed by the governor, one of whom the governor shall designate as chairperson.

3. Two public members appointed by the president of the senate.

4. Two public members appointed by the speaker of the assembly.

5. Two members of the senate, appointed in the same manner as members of standing committees are appointed.

6. Two members of the assembly, appointed in the same manner as members of standing committees are appointed.

(c) *Assembly member's and governor's terms.* Each member of the assembly serving on the council shall serve for the period of his or her term in office. The governor or his or her designee serving on the council under par. (b) 1. shall serve a 4−year term.

(12) CERTIFICATION STANDARDS REVIEW COUNCIL. (a) *Creation.* There is created in the department of administration a certification standards review council consisting of 9 members.

(b) *Membership.* 1. The secretary of administration shall appoint 8 members as follows:

a. One member to represent municipalities having wastewater treatment plants with average flows of more than 5,000,000 gallons per day.

b. One member to represent municipalities having wastewater treatment plants with average flows of less than 5,000,000 gallons per day.

c. One member to represent industrial laboratories with permits issued under ch. 283.

d. One member to represent commercial laboratories.

e. One member to represent public water utilities.

f. One member to represent solid and hazardous waste disposal facilities.

g. One member with a demonstrated interest in laboratory certification.

h. One member who is a farmer actively engaged in livestock production to represent agricultural interests.

2. The chancellor of the University of Wisconsin−Madison shall appoint one member to represent the state laboratory of hygiene.

(c) *Terms.* Members of the council shall serve for 3−year terms. A person may not serve more than 2 consecutive terms on the council.

(17) COUNCIL ON UTILITY PUBLIC BENEFITS. There is created a council on utility public benefits that is attached to the department

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of administration under s. 15.03. The council shall consist of the following members appointed for 3−year terms:

(a) Two members appointed by the governor.

(b) Two members appointed by the senate majority leader.

(c) One member appointed by the senate minority leader.

(d) Two members appointed by the speaker of the assembly.

(e) One member appointed by the assembly minority leader.

(f) One member appointed by the secretary of natural resources.

(g) One member appointed by the secretary of administration.

(h) One member appointed by the chairperson of the public service commission.

(18) INTEROPERABILITY COUNCIL. (a) There is created an interoperability council, attached to the department of administration under s. 15.03.

(b) The council consists of all of the following:

1. The executive director of the office of justice assistance, the adjutant general, the secretary of natural resources, the secretary of transportation, and a representative from the department of administration with knowledge of information technology, or their designees.

2. Ten members appointed by the governor for staggered 4−year terms, including a chief of police, a sheriff, a chief of a fire department, a director of emergency medical services, a local government elected official, a local emergency management director, a representative of a federally recognized American Indian tribe or band in this state, a hospital representative, a local health department representative, and one other person with relevant experience or expertise in interoperable communications.

(c) The governor shall designate a member of the council as the chairperson and a member as the vice chairperson.

History: 1971 c. 215; 1973 c. 90; 1977 c. 29, 419; 1979 c. 34; 1979 c. 361 s. 112; 1981 c. 20, 62, 237; 1983 a. 27, 393, 410; 1985 a. 29, 84; 1987 a. 27, 142; 1989 a. 31; 1991 a. 32 s. 17; 1991 a. 39, 170, 269; 1995 a. 27, ss. 119, 120 and 9116 (5); 1995 a. 227, 433, 442; 1997 a. 27, 35, 231; 1999 a. 9; 2001 a. 16, 38; 2003 a. 33; 2005 a. 228, 253, 421; 2007 a. 79; 2011 a. 32, 257.

15.13 Department of agriculture, trade and consumer protection; creation. There is created a department of agriculture, trade and consumer protection under the direction and supervision of the board of agriculture, trade and consumer protection. The board shall consist of 7 members with an agricultural background and 2 members who are consumer representatives, appointed for staggered 6−year terms. Appointments to the board shall be made without regard to party affiliation, residence or interest in any special organized group.

History: 1977 c. 29; 1995 a. 27; 1997 a. 27.

15.135 Same; attached boards and commissions. (1) LIVESTOCK FACILITY SITING REVIEW BOARD. (a) There is created a livestock facility siting review board which is attached to the department of agriculture, trade and consumer protection under s. 15.03. The board consists of the following members:

1. A member representing the interests of towns, selected from a list of names submitted by the Wisconsin Towns Association.

2. A member representing the interests of counties, selected from a list of names submitted by the Wisconsin Counties Association.

3. A member representing environmental interests, selected from a list of names submitted by environmental organizations.

4. A member representing livestock farming interests, selected from a list of names submitted by statewide agricultural organizations.

5. Three other members.

(b) The members under par. (a) shall be nominated by the secretary of agriculture, trade and consumer protection, and with the advice and consent of the senate appointed, for 5−year terms.

(4) LAND AND WATER CONSERVATION BOARD. (am) *Creation.* There is created a land and water conservation board which is attached to the department of agriculture, trade and consumer protection under s. 15.03.

(b) *Members.* The board consists of all of the following members:

1. The secretaries of administration, natural resources, and agriculture, trade and consumer protection or their designees.

2. Three members of county land conservation committees designated biennially by the county land conservation committees at their annual meeting in even−numbered years, appointed for 2−year terms.

2m. One representative appointed for a 2−year term.

3. Four other members appointed for staggered 4−year terms. One of those members shall be a resident of a city with a population of 50,000 or more, one shall represent a governmental unit involved in river management, one shall be a farmer and one shall be a member of a charitable corporation, charitable association or charitable trust, the purpose or powers of which include protecting natural resources, including scenic or open space, and maintaining or enhancing air or water quality.

(c) *Advisory members.* The board shall invite:

1. The U.S. secretary of agriculture to appoint a representative of the natural resources conservation service and a representative of the farm service agency to serve as advisory members of the board.

2. The dean of the College of Agricultural and Life Sciences of the University of Wisconsin−Madison and the director of the University of Wisconsin−Extension to serve or appoint a person to serve as an advisory member of the board.

3. The staff of the county land conservation committees employed under s. 92.09 to designate jointly a person to serve as an advisory member of the board.

(d) *Vacancies.* If one or more of the county land conservation committee member positions on the board is vacant, the chairperson may call a special meeting of the committees to fill the vacancies, but vacancies may be filled only if a majority of the committees are represented at the special meeting.

History: 1971 c. 125; 1973 c. 299; 1977 c. 29 ss. 32d, 33, 1650m (2), (4); 1979 c. 361 s. 112; 1981 c. 305, 346; 1983 a. 27; 1985 a. 20, 29, 153; 1987 a. 27, 281; 1989 a. 31, 219; 1991 a. 39; 1993 a. 16; 1995 a. 27; 1997 a. 27, 111; 2003 a. 235; 2005 a. 149.

15.137 Same; councils. (1) AGRICULTURAL PRODUCER SECURITY COUNCIL. (a) There is created in the department of agriculture, trade and consumer protection an agricultural producer security council consisting of the following members appointed by the secretary of agriculture for 3−year terms:

1. One person representing the Farmers' Educational and Cooperative Union of America, Wisconsin Division.

2. One person representing the Midwest Food Processors Association, Inc.

3. One person representing the National Farmers' Organization, Inc.

4. One person representing the Wisconsin Agri−Service Association, Inc.

5. One person representing the Wisconsin Cheese Makers Association.

6. One person representing both the Wisconsin Corn Growers Association, Inc., and the Wisconsin Soybean Association, Inc.

7. One person representing the Wisconsin Dairy Products Association, Inc.

8. One person representing the Wisconsin Farm Bureau Federation.

9. One person representing the Wisconsin Federation of Cooperatives.

10. One person representing the Wisconsin Potato and Vegetable Growers Association, Inc.

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(b) Each organization identified in par. (a) shall nominate 2 persons to represent that organization on the agricultural producer security council. The secretary of agriculture, trade and consumer protection shall appoint members from among the nominees.

(2) AGRICULTURAL EDUCATION AND WORKFORCE DEVELOPMENT COUNCIL. (a) There is created in the department of agriculture, trade and consumer protection an agricultural education and workforce development council consisting of the following members:

1. The secretary of agriculture, trade and consumer protection or his or her designee.

2. The state superintendent of public instruction or his or her designee.

3. The secretary of workforce development or his or her designee.

3m. The chief executive officer of the Wisconsin Economic Development Corporation or his or her designee.

4. The secretary of natural resources or his or her designee.

5. The president of the University of Wisconsin System or his or her designee.

6. The director of the technical college system or his or her designee.

7. The chancellor of the University of Wisconsin−Extension or his or her designee.

8. A member chosen jointly by the dean of the College of Agricultural and Life Sciences of the University of Wisconsin−Madison, the dean of the School of Veterinary Medicine of the University of Wisconsin−Madison, the dean of the College of Business, Industry, Life Science, and Agriculture of the University of Wisconsin−Platteville, the dean of the College of Agriculture, Food, and Environmental Sciences of the University of Wisconsin−River Falls, and the dean of the College of Natural Resources of the University of Wisconsin−Stevens Point to represent the colleges and school.

8g. A technical college district director appointed by the director of the technical college system.

8r. A technical college dean with authority over agricultural programs appointed by the director of the technical college system.

9. The chairpersons of one senate standing committee and one assembly standing committee concerned with education, appointed as are members of standing committees.

10. The chairpersons of one senate standing committee and one assembly standing committee concerned with agriculture, appointed as are members of standing committees.

11. A representative of the Wisconsin Association of Agricultural Educators.

12. Two representatives of general agriculture.

13. Two representatives of agribusiness.

14. A representative of environmental stewardship interests.

15. A representative of businesses related to natural resources.

16. A representative of businesses related to plant agriculture.

17. A representative of landscaping, golf course, greenhouse, floral, and related businesses.

18. A representative of food product and food processing businesses.

19. A representative of businesses related to animal agriculture.

20. A representative of businesses related to renewable energy.

21. A representative of agricultural communication interests.

22. A representative of businesses providing engineering, mechanical, electronic, and power services relating to agriculture.

23. A representative of the board of agriculture, trade and consumer protection.

24. A teacher who teaches classes in science, vocational technology, business, math, or a similar field.

25. A school guidance counselor.

26. A school board member.

27. A school district administrator.

(b) A person who is authorized under par. (a) 1. to 7. to appoint a designee may only appoint a designee who is an employee or appointive officer of the person's department or educational institution and who has sufficient authority to deploy department or system resources and directly influence department or educational institution decision making.

(c) The secretary of agriculture, trade and consumer protection shall appoint members of the council under par. (a) 11. to 23. to serve for 3−year terms. A member under par. (a) 11. to 23. may not serve more than 2 consecutive terms on the council.

(cm) The superintendent of public instruction shall appoint members of the council under par. (a) 24. to 27. to serve for 3−year terms. A member under par. (a) 24. to 27. may not serve more than 2 consecutive terms on the council.

(3) FARM TO SCHOOL COUNCIL. (a) There is created in the department of agriculture, trade and consumer protection a farm to school council.

(b) The secretary of agriculture, trade and consumer protection shall appoint to the council an employee of the department and shall appoint farmers, experts in child health, school food service personnel, and other persons with interests in agriculture, nutrition, and education.

(c) The secretary of health services shall appoint to the council an employee of the department of health services.

(d) The superintendent of public instruction shall appoint to the council an employee of the department of public instruction.

(5) FERTILIZER RESEARCH COUNCIL. There is created in the department of agriculture, trade and consumer protection a fertilizer research council consisting of the following members:

(a) *Nonvoting members.* The secretary of agriculture, trade and consumer protection, the secretary of natural resources and the dean of the College of Agricultural and Life Sciences at the University of Wisconsin−Madison, or their designees, shall serve as nonvoting members.

(b) *Voting members.* 1. Six voting members shall be appointed jointly by the secretary of the department of agriculture, trade and consumer protection and the dean of the College of Agricultural and Life Sciences at the University of Wisconsin−Madison, to serve for 3−year terms. Three of the members appointed under this subdivision shall be industry representatives selected from a list of candidates provided by the fertilizer industry. Three of the members appointed under this subdivision shall represent farmers who are crop producers.

2. One voting member shall be appointed by the secretary of natural resources to serve for a 3−year term. The member appointed under this subdivision shall be knowledgeable about water quality.

3. No voting member may serve more than 2 consecutive 3−year terms.

(6) BIOENERGY COUNCIL. There is created a bioenergy council which is attached to the department of agriculture, trade and consumer protection under s. 15.03. The secretary of agriculture, trade and consumer protection shall appoint the members of the council, to serve at the pleasure of the secretary.

History: 1977 c. 29 s. 1650m (2), (4); 1977 c. 87, 216, 272, 418; 1979 c. 129; 1981 c. 57, 237; 1985 a. 184; 1987 a. 281; 1991 a. 269, 315; 1993 a. 417; 1997 a. 27; 2001 a. 16; 2007 a. 223; 2009 a. 293, 401; 2011 a. 32.

15.14 Department of corrections; creation. There is created a department of corrections under the direction and supervision of the secretary of corrections.

History: 1989 a. 31.

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15.145 Same; attached boards, commissions, and councils. (1) PAROLE COMMISSION. There is created in the department of corrections a parole commission consisting of 8 members. Members shall have knowledge of or experience in corrections or criminal justice. The members shall include a chairperson who is nominated by the governor, and with the advice and consent of the senate appointed, for a 2−year term expiring March 1 of the odd−numbered years, subject to removal under s. 17.07 (3m), and the remaining members in the classified service appointed by the chairperson.

(2) PRISON INDUSTRIES BOARD. There is created a prison industries board which is attached to the department of corrections under s. 15.03. The board shall consist of 9 members appointed for 4−year terms. Three members shall be appointed to represent private business and industry and 3 members shall be appointed to represent private labor organizations. One member shall be appointed to represent each of the following:

(c) The technical college system.

(d) The department of corrections.

(f) The department of administration.

(3) INTERSTATE ADULT OFFENDER SUPERVISION BOARD. There is created an interstate adult offender supervision board which is attached to the department of corrections under s. 15.03. The board shall consist of 5 members appointed for 4−year terms. The governor shall comply with the requirements of s. 304.16 (4) when appointing members of the board. The board shall have the powers, duties, and responsibilities set forth under s. 304.16.

(4) STATE BOARD FOR INTERSTATE JUVENILE SUPERVISION. There is created a state board for interstate juvenile supervision, which is attached to the department of corrections under s. 15.03. The board shall consist of 5 members appointed for 3−year terms. The governor shall comply with the requirements of s. 938.999 (9) when appointing members of the board. The board shall have the powers, duties, and responsibilities set forth under s. 938.999.

(5) COUNCIL ON OFFENDER REENTRY. There is created a council on offender reentry which is attached to the department of corrections under s. 15.03, which shall have the duties, responsibilities, and powers set forth under s. 301.095. The council shall consist of 22 [21] members, and the appointed members shall serve for 2−year terms and may be appointed for a maximum of 2 consecutive terms. The chairperson of the council shall be the secretary of corrections or the reentry director, as decided by the secretary of corrections. The chairperson may appoint subcommittees and the council shall meet no less frequently than 4 times per year at a date and location to be determined by the chairperson. Members of the council shall include the secretary of corrections, or his or her designee; the secretary of workforce development, or his or her designee; the secretary of health services, or his or her designee; the secretary of children and families, or his or her designee; the secretary of transportation, or his or her designee; the attorney general, or his or her designee; the chairperson of the parole commission, or his or her designee; the state superintendent of public instruction; the reentry director as appointed by the secretary of corrections; a current or former judge, as appointed by the director of state courts; an individual who has been previously convicted of, and incarcerated for, a crime in Wisconsin, as appointed by the secretary of corrections; and the following persons, as appointed by the governor:

NOTE: The correct number is shown in brackets. Corrective legislation is pending.

(a) A law enforcement officer.

(b) A representative of a crime victim rights or crime victim services organization.

(c) A representative of a faith−based organization that is involved with the reintegration of offenders into the community.

(d) A representative of a county department of human services.

(e) A representative of a federally recognized American Indian tribe or band in this state.

(f) A representative of a nonprofit organization that is involved with the reintegration of offenders into the community and that is not a faith−based organization.

(g) A district attorney.

(h) A representative of the office of the state public defender.

(i) An academic professional in the field of criminal justice.

(j) A representative of the Wisconsin Technical College System.

History: 1989 a. 107 ss. 4, 5m; 1989 a. 121; 1993 a. 399; 1997 a. 27, 237; 2001 a. 16, 96; 2005 a. 234; 2009 a. 28, 276; 2011 a. 32, 38.

15.16 Department of employee trust funds; creation. There is created a department of employee trust funds under the direction and supervision of the employee trust funds board.

(1) EMPLOYEE TRUST FUNDS BOARD. The employee trust funds board shall consist of the governor or the governor's designee on the group insurance board, the director of the office of state employment relations or the director's designee and 11 persons appointed or elected for 4−year terms as follows:

(a) Four members shall be members of the teachers retirement board, appointed by that board.

1. At least one appointee under this paragraph shall have been appointed or elected to the board under s. 15.165 (3) (a) 1. or 2.

2. At least one appointee under this paragraph shall have been appointed to the board under s. 15.165 (3) (a) 4.

3. At least one appointee under this paragraph shall have been elected to the board under s. 15.165 (3) (a) 7.

4. At least one appointee under this paragraph shall have been appointed to the board under s. 15.165 (3) (a) 3. or 5.

(b) Four members shall be members of the Wisconsin retirement board, appointed by that board.

1. At least one appointee under this paragraph shall have been appointed to the board under s. 15.165 (3) (b) 1., 2., 4., 5. or 8.

2. At least one appointee under this paragraph shall have been appointed to the board under s. 15.165 (3) (b) 3., 6. or 7.

3. At least one appointee under this paragraph shall have been appointed to the board under s. 15.165 (3) (b) 7. or 8.

(c) One member shall be a public member who is not a participant in or beneficiary of the Wisconsin retirement system, with at least 5 years of experience in actuarial analysis, administration of an employee benefit plan or significant administrative responsibility in a major insurer. It is the intent of the legislature that the member appointed under this paragraph shall represent the interests of the taxpayers of this state and shall not be representative of public employee or employer interests.

(d) One member shall be an annuitant, as defined for purposes other than life insurance under s. 40.02 (4), elected by annuitants, as defined for purposes other than life insurance under s. 40.02 (4).

(f) One member who is a participant in the Wisconsin retirement system and who is a technical college educational support personnel employee, as defined in s. 40.02 (55g), or an educational support personnel employee, as defined in s. 40.02 (22m), elected by participating employees meeting the same criteria.

History: 1979 c. 221; 1981 c. 96; 1991 a. 116; 1999 a. 181; 2003 a. 33 ss. 101, 9160; 2005 a. 25.

Membership requirements under sub. (1) (a) and (b) apply only at the time of appointment. Appointees serve "at pleasure" of the appointing boards under sub. (1) (a) and (b). 75 Atty. Gen. 127 (1986).

15.165 Same; attached boards. (1) BOARD MEMBERS. (a) Any member of a board created under this section who loses the status upon which the appointment or election was based shall cease to be a member of the board upon appointment or election to the board of a qualified successor.

(b) For purposes of this section, annuitants are deemed to be employees in the last position in which they were covered by the Wisconsin retirement system, except that annuitants may not be elected, appointed or vote under sub. (3) (a) 1., 2., 4. or 7.

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(2) GROUP INSURANCE BOARD. There is created in the department of employee trust funds a group insurance board. The board shall consist of the governor, the attorney general, the secretary of administration, the director of the office of state employment relations, and the commissioner of insurance or their designees, and 6 persons appointed for 2−year terms, of whom one shall be an insured participant in the Wisconsin Retirement System who is not a teacher, one shall be an insured participant in the Wisconsin Retirement System who is a teacher, one shall be an insured participant in the Wisconsin Retirement System who is a retired employee, one shall be an insured employee of a local unit of government, and one shall be the chief executive or a member of the governing body of a local unit of government that is a participating employer in the Wisconsin Retirement System.

(3) RETIREMENT BOARDS. (a) *Teachers retirement board.* There is created in the department of employee trust funds a teachers retirement board. The board shall consist of 13 members, to serve for staggered 5−year terms. The board shall consist of the following members:

1. Six public school teachers who are participating employees in the Wisconsin retirement system and who are not eligible for election under any other subdivision of this paragraph, elected by participating employees meeting the same criteria.

2. One public school teacher from a technical college district who is a participating employee in the Wisconsin retirement system, elected by teacher participating employees from technical college districts.

3. One administrator in Wisconsin's public schools who is not a classroom teacher.

4. Two University of Wisconsin System representatives who are teacher participants in the Wisconsin retirement system. The representatives under this subdivision shall not be from the same campus.

5. One representative who is a member of a school board.

6. One annuitant who was a teacher participant in the Wisconsin retirement system, elected by the annuitants who were teacher participants.

7. One teacher in the city of Milwaukee who is a participating employee in the Wisconsin retirement system, elected by the teachers of the public schools in that city who are participating employees.

(b) *Wisconsin retirement board.* There is created in the department of employee trust funds a Wisconsin retirement board. The board shall consist of 9 members, and board members appointed under subds. 1. to 8. shall serve for staggered 5−year terms. The member appointed under subd. 1. shall be appointed from a list of 5 names submitted by the board of directors of the League of Wisconsin Municipalities, and the member appointed under subd. 4. shall be appointed from a list of 5 names submitted by the executive committee of the Wisconsin Counties Association. Each member appointed under subds. 1., 2., and 3. shall be from a different county. Each member appointed under subds. 4., 5., and 6. shall be appointed from a different county. The board shall consist of the following members:

1. One member who is the chief executive or a member of the governing body of a participating city or village.

2. One member who is a participating employee and the principal finance officer of a participating city or village.

3. One member who is a participating employee of a participating city or village.

4. One member who is the chairperson or a member of the governing body of a participating county or town.

5. One member who is a county clerk or deputy county clerk of a participating county.

6. One member who is a participating employee of a participating local employer other than a city or village.

7. One member who is a participating state employee.

8. One member who is a public member not a participant in or beneficiary of the Wisconsin retirement system. It is the intent of the legislature that the members appointed under this paragraph shall represent the interests of the taxpayers of this state and shall not be representative of public employee or employer interests.

9. The commissioner of insurance or an experienced actuary in the office of the commissioner designated by the commissioner.

(4) DEFERRED COMPENSATION BOARD. There is created in the department of employee trust funds a deferred compensation board consisting of 5 members appointed for 4−year terms.

History: 1973 c. 151, 329; 1977 c. 29, 418; 1979 c. 221; 1981 c. 96; 1983 a. 192 s. 303 (7); 1983 a. 290; 1985 a. 230; 1987 a. 403; 1989 a. 31; 1993 a. 399; 1999 a. 9; 2001 a. 103; 2003 a. 33 ss. 102, 9160; 2005 a. 66; 2007 a. 20 s. 9121 (6) (a).

Public school administrators are eligible to be candidates for and to vote for teacher representatives on the teachers retirement board. 76 Atty. Gen. 141.

15.18 Department of financial institutions. There is created a department of financial institutions under the direction and supervision of the secretary of financial institutions.

History: 1995 a. 27.

15.183 Same; specified divisions. (1) DIVISION OF BANKING. There is created a division of banking. Prior to July 1, 2000, the division is attached to the department of financial institutions under s. 15.03. After June 30, 2000, the division is created in the department of financial institutions. The administrator of the division shall be appointed outside the classified service by the secretary of financial institutions and shall serve at the pleasure of the secretary.

(3) DIVISION OF SECURITIES. There is created a division of securities. Prior to July 1, 2000, the division is attached to the department of financial institutions under s. 15.03. After June 30, 2000, the division is created in the department of financial institutions. The administrator of the division shall be appointed outside the classified service by the secretary of financial institutions and shall serve at the pleasure of the secretary.

History: 1995 a. 27; 1999 a. 9; 2003 a. 33.

15.185 Same; attached boards and offices. (1) BANKING REVIEW BOARD. There is created in the department of financial institutions a banking review board consisting of 5 persons, appointed for staggered 5−year terms. At least 3 members shall be experienced bankers having at least 5 years' experience in the banking business. No member is qualified to act in any matter involving a bank in which the member is an officer, director or stockholder, or to which the member is indebted.

(3) SAVINGS INSTITUTIONS REVIEW BOARD. There is created in the department of financial institutions a savings institutions review board consisting of 5 members, at least 3 of whom shall have not less than 5 years' experience in the savings and loan or savings bank business in this state, appointed for 5−year terms.

(7) OFFICE OF CREDIT UNIONS. (a) *Office of credit unions; creation.* There is created an office of credit unions which is attached to the department of financial institutions under s. 15.03. The director shall be appointed by the governor to serve at the pleasure of the governor. No person may be appointed director who has not had at least 3 years of actual experience either in the operation of a credit union, or serving in a credit union supervisory capacity, or a combination of both. Notwithstanding s. 15.03, all personnel and budget requests by the office of credit unions shall be processed and forwarded by the department of financial institutions without change except as requested and concurred in by the office of credit unions.

(b) *Credit union review board.* There is created in the office of credit unions a credit union review board consisting of 5 persons, appointed for staggered 5−year terms. All members shall have at least 5 years' experience in the operations of a credit union. The office of credit unions may call special meetings of the review board.

History: 1995 a. 27, ss. 135, 136, 196, 197, 201, 203, 216, 217; 1997 a. 27; 2003 a. 33.

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15.19 Department of health services; creation. There is created a department of health services under the direction and supervision of the secretary of health services.

History: 1975 c. 39; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

15.195 Same; attached boards and commissions. (8) EMERGENCY MEDICAL SERVICES BOARD. There is created an emergency medical services board, which is attached to the department of health services under s. 15.03. The board shall consist of 11 voting members, appointed for 3−year terms, who have an interest and expertise in emergency medical services issues, who represent the various geographical areas of the state and who include representatives of the various types of emergency medical services providers. In addition to the 11 voting members, the secretary of health services, the secretary of transportation, the director of the technical college system board and the state medical director for emergency medical services or their designees shall serve as nonvoting members of the board.

History: 1971 c. 219; 1977 c. 29 s. 1650m (2); 1977 c. 273; 1983 a. 27; 1983 a. 109 ss. 1, 3; 1985 a. 56; 1987 a. 399; 1989 a. 102, 107; 1991 a. 250; 1993 a. 16, 168, 184, 233; 1995 a. 27 ss. 138, 139, 9126 (19); 1995 a. 225, 305; 1997 a. 27 ss. 60e to 61, 93; 1997 a. 231; 1999 a. 9; 2001 a. 16, 79; 2003 a. 33; 2005 a. 228, 319; 2007 a. 20 ss. 39 to 50, 9121 (6) (a).

15.197 Same; councils. (1) COUNCIL ON MENTAL HEALTH. There is created in the department of health services a council on mental health consisting of not less than 21 nor more than 25 members nominated by the secretary of health services and appointed by the governor for 3−year terms. Persons appointed to the council on mental health shall include representatives of groups and a proportion of members as specified in 42 USC 300x−3 (c), as amended to April 2, 2008.

(2) COUNCIL ON BLINDNESS. There is created in the department of health services a council on blindness consisting of 9 members appointed by the secretary of health services for staggered 3−year terms. At least 7 of the persons appointed to the council shall be blind or visually impaired, as defined in s. 47.01 (1) or (5) and shall reflect a broad representation of blind or visually impaired persons. All council members shall have a recognized interest in and demonstrated knowledge of the problems of the blind or visually impaired. Council members may be persons receiving services from the department. The council has the functions specified in s. 47.03 (9).

(4) COUNCIL ON PHYSICAL DISABILITIES. (a) *Definitions.* In this subsection:

1. "Major life activity" means any of the following:

a. Self−care.

b. Performance of manual tasks unrelated to gainful employment.

c. Walking.

d. Receptive and expressive language.

e. Breathing.

f. Working.

g. Participating in educational programs.

h. Mobility, other than walking.

i. Capacity for independent living.

2. "Physical disability" means a physical condition, including an anatomical loss or musculoskeletal, neurological, respiratory or cardiovascular impairment, which results from injury, disease or congenital disorder and which significantly interferes with or significantly limits at least one major life activity of a person.

3. "Physically disabled person" means an individual having a physical disability.

(b) *Creation and membership.* There is created a council on physical disabilities, attached to the department of health services under s. 15.03. The council shall consist of all of the following:

1. The governor, or his or her designee.

3. Thirteen members, appointed for 3−year terms, under the following criteria:

a. The members shall be appointed from residents of this state who have a demonstrated professional or personal interest in problems of physical disability and shall be selected so as to include a reasonably equitable representation of those communities located in the state's urban and rural areas and with regard to sex and race.

b. At least 6 members shall be physically disabled persons. Two members may be parents, guardians or relatives of physically disabled persons.

c. At least one member shall be a provider of services to physically disabled persons.

(c) The council has the functions specified in s. 46.29.

(8) COUNCIL FOR THE DEAF AND HARD OF HEARING. There is created in the department of health services a council for the deaf and hard of hearing consisting of 9 members appointed for staggered 4−year terms.

(12) COUNCIL ON BIRTH DEFECT PREVENTION AND SURVEILLANCE. There is created in the department of health services a council on birth defect prevention and surveillance. The council shall consist of the following members appointed for a 4−year term by the secretary of health services:

(a) A representative of the University of Wisconsin Medical School who has technical expertise in birth defects epidemiology.

(b) A representative from the Medical College of Wisconsin who has technical expertise in birth defects epidemiology.

(bn) A pediatric nurse or a nurse with expertise in birth defects.

(c) A representative from the subunit of the department that is primarily responsible for the children with special health needs program.

(d) A representative from the subunit of the department that is primarily responsible for early intervention services.

(e) A representative from the subunit of the department that is primarily responsible for health statistics research and analysis.

(f) A representative of the State Medical Society of Wisconsin.

(g) A representative of the Wisconsin Health and Hospital Association.

(h) A representative of the American Academy of Pediatrics — Wisconsin Chapter.

(i) A representative of the board for people with developmental disabilities.

(j) A representative of a nonprofit organization that has as its primary purpose the prevention of birth defects and does not promote abortion as a method of prevention.

(k) A parent or guardian of a child with a birth defect.

(L) A representative of a local health department, as defined in s. 250.01 (4), who is not an employee of the department of health services.

(13) PUBLIC HEALTH COUNCIL. There is created in the department of health services a public health council consisting of 23 members, nominated by the secretary of health services, and appointed for 3−year terms. The council shall include representatives of health care consumers, health care providers, health professions educators, local health departments and boards, federally recognized American Indian tribes or bands in this state, public safety agencies, and, if created by the secretary of health services under s. 15.04 (1) (c), the public health advisory committee.

(25) TRAUMA ADVISORY COUNCIL. (a) There is created in the department of health services a trauma advisory council. The trauma advisory council shall consist of the following members who have an interest and expertise in emergency medical services and who are appointed by the secretary of health services:

1. Four physicians who represent urban and rural areas.

2. Two registered nurses, as defined in s. 146.40 (1) (f).

3. Two prehospital emergency medical services providers, including one representative of a municipality.

4. Two representatives of a rural hospital.

5. Two representatives of an urban hospital.

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6. One member of the emergency medical services board.

(b) In appointing the members under par. (a), the secretary of health services shall ensure that all geographic areas of the state are represented.

History: 1971 c. 125, 219, 255, 322, 332; 1973 c. 198, 321, 322; 1975 c. 39 ss. 46 to 52, 732 (2); 1975 c. 115, 168, 199, 200; 1977 c. 29 ss. 36, 40, 41, 42, 42c, 42g, 42k, 42p, 42t, 42x, 43, 1650m (2), (4), 1657 (18) (c); 1977 c. 160, 213, 428; 1979 c. 34, 111, 221, 320, 355; 1981 c. 20, 24; 1983 a. 27, 113, 188, 204, 435, 439, 538; 1985 a. 29; 1987 a. 27, 413; 1989 a. 31, 202; 1991 a. 32, 39, 189, 250; 1993 a. 16, 27, 98, 213, 399; 1995 a. 27 ss. 139m to 143, 9126 (19), 9130 (4); 1995 a. 225, 303, 352; 1997 a. 3, 27, 154; 1999 a. 9, 114; 2001 a. 59, 109; 2003 a. 29, 186; 2007 a. 20 ss. 40 to 50, 9121 (6) (a); 2007 a. 113; 2009 a. 180.

15.20 Department of children and families; creation. There is created a department of children and families under the direction and supervision of the secretary of children and families.

History: 2007 a. 20.

15.205 Same; attached boards. (4) CHILD ABUSE AND NEGLECT PREVENTION BOARD. There is created a child abuse and neglect prevention board which is attached to the department of children and families under s. 15.03. The board shall consist of 20 members as follows:

(a) The governor or his or her designee.

(b) The attorney general or his or her designee.

(c) The secretary of health services or his or her designee.

(d) The state superintendent of public instruction or his or her designee.

(dg) The secretary of corrections or his or her designee.

(dr) The secretary of children and families or his or her designee.

(e) One representative to the assembly appointed by the speaker of the assembly or that appointed representative's designee.

(em) One representative to the assembly appointed by the minority leader of the assembly or that appointed representative's designee.

(f) One senator appointed by the president of the senate or that appointed senator's designee.

(fm) One senator appointed by the minority leader of the senate or that appointed senator's designee.

(g) Ten public members appointed by the governor for staggered 3−year terms. The public members shall be appointed on the basis of expertise, experience, leadership, or advocacy in the prevention of child abuse and neglect.

History: 2007 a. 20 ss. 39 to 50, 66, 9121 (6) (a).

15.207 Same; councils. (16) COUNCIL ON DOMESTIC ABUSE. There is created in the department of children and families a council on domestic abuse. The council shall consist of 13 members appointed for staggered 3−year terms. Of those 13 members, 9 shall be nominated by the governor and appointed with the advice and consent of the senate, and one each shall be designated by the speaker of the assembly, the senate majority leader and the minority leader in each house of the legislature and appointed by the governor. Persons appointed shall have a recognized interest in and knowledge of the problems and treatment of victims of domestic abuse.

(24) MILWAUKEE CHILD WELFARE PARTNERSHIP COUNCIL. (a) There is created a Milwaukee child welfare partnership council, attached to the department of children and families under s. 15.03. The council shall consist of the following members:

1. Three members of the Milwaukee County board nominated by the Milwaukee County executive.

2. One representative to the assembly appointed by the speaker of the assembly.

3. One representative to the assembly appointed by the minority leader of the assembly.

4. One senator appointed by the president of the senate.

5. One senator appointed by the minority leader of the senate.

6. Ten members who are residents of this state, not less than 6 of whom shall be residents of Milwaukee County.

7. Subject to par. (d), two members who are nominated by a children's services network established in Milwaukee County under s. 49.143 (2) (b) and who are residents of the geographical area established under s. 49.143 (6) that is served by the children's services network.

(b) Notwithstanding s. 15.09 (2), the governor shall designate one of the members appointed under par. (a) 6. as chairperson of the council.

(c) The members of the council appointed under par. (a) 1., 6. and 7. shall be appointed for 3−year terms.

(d) If the department of children and families establishes more than one geographical area in Milwaukee County under s. 49.143 (6), the children's services networks established in Milwaukee County under s. 49.143 (2) (b), in nominating members under par. (a) 7., shall nominate residents of different geographical areas established under s. 49.143 (6) and, when the term of a member appointed under par. (a) 7. ends or if a vacancy occurs in the membership of the council under par. (a) 7., those children's services networks shall nominate a resident of a different geographical area established under s. 49.143 (6) from the geographical area of the member who is being replaced according to a rotating order of succession determined by the children's services networks.

History: 2007 a. 20 ss. 53 to 64, 67; 2009 a. 180 s. 13.

15.22 Department of workforce development; creation. There is created a department of workforce development under the direction and supervision of the secretary of workforce development.

History: 1977 c. 29; 1995 a. 27 s. 9130 (4); 1997 a. 3.

15.223 Same; specified divisions. (1) DIVISION OF EQUAL RIGHTS. There is created in the department of workforce development a division of equal rights.

History: 1995 a. 27 ss. 144, 9130 (4); 1997 a. 3, 27; 1999 a. 9; 2001 a. 16.

15.225 Same; attached boards and commission. (1) LABOR AND INDUSTRY REVIEW COMMISSION. There is created a labor and industry review commission which is attached to the department of workforce development under s. 15.03, except the budget of the labor and industry review commission shall be transmitted by the department to the governor without change or modification by the department, unless agreed to by the labor and industry review commission.

History: 1977 c. 29; 1995 a. 27 ss. 107 to 111, 9126 (19), 9130 (4); 1995 a. 221; 1997 a. 3; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25.

15.227 Same; councils. (3) COUNCIL ON UNEMPLOYMENT INSURANCE. There is created in the department of workforce development a council on unemployment insurance appointed by the secretary of workforce development to consist of 5 representatives of employers and 5 representatives of employees appointed to serve for 6−year terms and a permanent classified employee of the department of workforce development who shall serve as nonvoting chairperson. In making appointments to the council, the secretary shall give due consideration to achieving balanced representation of the industrial, commercial, construction, nonprofit and public sectors of the state's economy. One of the employer representatives shall be an owner of a small business or a representative of an association primarily composed of small businesses. In this subsection, "small business" means an independently owned and operated business which is not dominant in its field and which has had less than $2,000,000 in gross annual sales for each of the previous 2 calendar years or has 25 or fewer employees. A member vacates his or her office if the member loses the status upon which his or her appointment is based.

(4) COUNCIL ON WORKER'S COMPENSATION. There is created in the department of workforce development a council on worker's compensation appointed by the secretary of workforce development to consist of a designated employee of the department of workforce development as chairperson, 5 representatives of

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employers, and 5 representatives of employees. The secretary of workforce development shall also appoint 3 representatives of insurers authorized to do worker's compensation insurance business in this state as nonvoting members of the council.

(8) COUNCIL ON MIGRANT LABOR. There is created in the department of workforce development a council on migrant labor. Nonlegislative members shall serve for staggered 3−year terms and shall include 6 representatives of employers of migrant workers and 6 representatives of migrant workers and their organizations. Two members of the senate and 2 members of the assembly shall be appointed to act as representatives of the public. Legislative members shall be appointed as are members of standing committees and shall be equally divided between the 2 major political parties.

(11) SELF−INSURERS COUNCIL. There is created in the department of workforce development a self−insurers council consisting of 5 members appointed by the secretary of workforce development for 3−year terms.

(13) WISCONSIN APPRENTICESHIP COUNCIL. (a) There is created in the department of workforce development a Wisconsin apprenticeship council consisting of all of the following:

1. Nine representatives of employers, appointed by the secretary of workforce development.

2. Nine representatives of employees, appointed by the secretary of workforce development.

3. One representative of the technical college system, appointed by the director of the technical college system.

4. One representative of the department of public instruction, appointed by the state superintendent of public instruction.

5. Two members who represent the public interest, appointed by the secretary of workforce development.

6. One permanent classified employee of the department of workforce development, appointed by the secretary of workforce development, who shall serve as nonvoting chairperson.

(b) All members of the Wisconsin apprenticeship council shall be persons who are familiar with apprenticeable occupations.

(17) LABOR AND MANAGEMENT COUNCIL. (a) There is created in the department of workforce development a labor and management council to advise the department of workforce development about sponsoring labor and management conferences and meetings and promoting positive relations between labor and management.

(b) The council shall have 21 members, serving 5−year terms, consisting of:

1. Eight representatives of the labor community in this state.

2. Eight representatives of the management community in this state.

3. Five nonvoting members who are public employees or officials.

History: 1971 c. 271; 1975 c. 147 s. 54; 1975 c. 404, 405; 1977 c. 17, 29, 325; 1979 c. 102, 189; 1979 c. 221 ss. 45, 46m; 1981 c. 237, 341; 1983 a. 122, 388; 1985 a. 332; 1987 a. 27, 399; 1989 a. 31, 64; 1991 a. 39, 269, 295; 1993 a. 126, 399; 1995 a. 27 ss. 152 to 165, 9126 (19), 9130 (4); 1995 a. 225; 1997 a. 3, 27, 39; 1999 a. 9, 14; 2001 a. 37; 2009 a. 291.

15.25 Department of justice; creation. There is created a department of justice under the direction and supervision of the attorney general.

15.253 Same; specified divisions. (2) DIVISION OF CRIMINAL INVESTIGATION. There is created in the department of justice a division of criminal investigation.

History: 1979 c. 34 s. 39; 1983 a. 192; 1985 a. 29; 1989 a. 122; 1991 a. 269; 1993 a. 16; 2003 a. 33.

15.255 Same; attached boards. (1) LAW ENFORCEMENT STANDARDS BOARD. There is created a law enforcement standards board which is attached to the department of justice under s. 15.03.

(a) The board shall be composed of 15 members as follows:

1. Six representatives of local law enforcement in this state at least one of whom shall be a sheriff and at least one of whom shall be a chief of police.

2. One district attorney holding office in this state.

3. Two representatives of local government in this state who occupy executive or legislative posts.

4. One public member, not employed in law enforcement, who is a citizen of this state.

5. The secretary of transportation or the secretary's designee.

6. The attorney general or a member of the attorney general's staff designated by the attorney general.

7. The executive staff director of the office of justice assistance in the department of administration.

8. The secretary of natural resources or the secretary's designee.

9. The special agent in charge of the Milwaukee office of the federal bureau of investigation, or a member of the special agent's staff designated by the special agent, who shall act in an advisory capacity but shall have no vote.

(b) The members of the board under par. (a) 1. to 4. shall be appointed for staggered 4−year terms, but no member shall serve beyond the time when the member ceases to hold the office or employment by reason of which the member was initially eligible for appointment.

(c) Notwithstanding the provisions of any statute, ordinance, local law or charter provision, membership on the board does not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.

(2) CRIME VICTIMS RIGHTS BOARD. (a) There is created a crime victims rights board which is attached to the department of justice under s. 15.03.

(b) The crime victims rights board shall be composed of 5 members as follows:

1. One district attorney holding office in this state.

2. One representative of local law enforcement in this state.

3. One person who is employed or contracted by a county board of supervisors under s. 950.06 to provide services for victims and witnesses of crimes.

4. Two members, not employed in law enforcement, by a district attorney or as specified in subd. 3., who are citizens of this state.

(c) The members of the crime victims rights board specified in par. (b) 2. and 3. shall be appointed by the attorney general. One of the members specified in par. (b) 4. shall be appointed by the crime victims council and the other member shall be appointed by the governor. The member specified in par. (b) 1. shall be appointed by the Wisconsin District Attorneys Association.

(d) The members of the crime victims rights board under par. (a) shall be appointed for 4−year terms, but no member shall serve beyond the time when the member ceases to hold the office or employment by reason of which the member was initially eligible for appointment.

(e) Notwithstanding the provisions of any statute, ordinance, local law or charter provision, membership on the crime victims rights board does not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.

History: 1971 c. 40; 1977 c. 29; 1981 c. 9; 1983 a. 27; 1987 a. 27, 403; 1991 a. 316; 1997 a. 181.

15.257 Same; councils. (2) CRIME VICTIMS COUNCIL. There is created in the department of justice a crime victims council consisting of 15 persons appointed by the attorney general for staggered 3−year terms. Of the 15 members, 10 shall be citizen members, 2 shall represent organizations providing victim support services and one each shall be representatives of law enforcement, district attorneys and the judiciary. The citizen members shall have demonstrated sensitivity and concern for crime victims.

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History: 1979 c. 34, 189; 1981 c. 20; 1985 a. 29 s. 3200 (35); 1985 a. 332; 1987 a. 27; 1997 a. 27, 88.

15.31 Department of military affairs; creation. There is created a department of military affairs under the direction and supervision of the adjutant general who shall be appointed by the governor for a 5−year term. The adjutant general may be reappointed to successive terms. Notwithstanding s. 17.28, if a vacancy occurs in the office of the adjutant general, the governor shall appoint a successor for a 5−year term. A person must meet all of the following requirements to be appointed as the adjutant general:

(1) Hold the federally recognized minimum rank of full colonel.

(2) Except for those qualified under sub. (4), be a current participating member of one of the following components:

(a) The Wisconsin army national guard.

(b) The army national guard of the United States.

(c) The U.S. army reserve.

(d) The Wisconsin air national guard.

(e) The air national guard of the United States.

(f) The U.S. air force reserve.

(3) Be fully qualified to receive federal recognition at the minimum rank of brigadier general and have successfully completed a war college course or the military equivalent acceptable to the appropriate service.

(4) If the applicant is already a federally recognized general officer, meet all of the following conditions:

(a) Be retired from active drilling status within the proceeding 2 years.

(b) The basis of the applicant's retired status was service with one of the service components noted in sub. (2).

(c) Be 62 years of age or less.

(d) Continue to be eligible for federal recognition as a major general.

History: 1981 c. 35; 1983 a. 391; 1987 a. 63; 1989 a. 19; 2003 a. 25, 321.

15.313 Same; specified division. (1) DIVISION OF EMERGENCY MANAGEMENT. There is created in the department of military affairs a division of emergency management. The administrator of this division shall be nominated by the governor and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

History: 1989 a. 31 ss. 58, 83; 1995 a. 247.

15.34 Department of natural resources; creation. (1) There is created a department of natural resources under the direction and supervision of the natural resources board.

(2) (a) The natural resources board shall consist of 7 members appointed for staggered 6−year terms.

(b) At least 3 members of the natural resources board shall be from the territory north, and at least 3 members of the board shall be from the territory south, of a line running east and west through the south limits of the city of Stevens Point.

(bg) At least one member of the natural resources board shall have an agricultural background. The governor may request statewide agricultural organizations to submit recommendations for nominees under this paragraph. The requirements of this paragraph apply to individuals who are members of the natural resources board on May 1, 2017, and thereafter.

(br) 1. At least 3 members of the natural resources board shall be individuals who held an annual hunting, fishing, or trapping license, in this state or another state, in at least 7 of the 10 years previous to the year in which the individual is nominated, except as provided in subd. 2. The governor may request statewide organizations that are primarily interested in supporting hunting, fishing, or trapping to submit recommendations for nominees under this paragraph. The requirements of this paragraph apply to individuals who are members of the natural resources board on May 1, 2017, and thereafter.

2. If an individual served on active duty in the U.S. armed forces or national guard during the 10 years previous to the year in which the individual is nominated, the number of years in which the individual is required to have held an annual hunting, fishing, or trapping license equals 7 minus the number of years of active duty served during those 10 years.

(c) No person may be appointed to the natural resources board, or remain a member of the board, who receives, or has during the previous 2 years received, a significant portion of his or her income directly or indirectly from holders of or applicants for permits issued by the department under ch. 283, except that this paragraph does not apply to permits issued under s. 283.33.

(d) The majority of members of the natural resources board may not derive a significant portion of their incomes from persons who are subject to permits or enforcement orders under ch. 285. Each board member shall inform the governor of any significant change in the income that he or she derives from persons who are subject to permits or enforcement orders under ch. 285.

(e) The restrictions in pars. (c) and (d) do not apply with respect to permits or licenses held or applied for by agencies, departments, or subdivisions of this state.

History: 1973 c. 74; 1991 a. 316; 2001 a. 16; 2011 a. 149.

15.343 Same; specified divisions. (1) DIVISION OF FORESTRY. There is created in the department of natural resources a division of forestry.

History: 1999 a. 9.

15.345 Same; attached boards and commissions. (1) WISCONSIN WATERWAYS COMMISSION. There is created a Wisconsin waterways commission which is attached to the department of natural resources under s. 15.03.

(a) The commission shall be composed of 5 members appointed for staggered 5−year terms.

1. One resident of the Lake Superior area.

2. One resident of the Lake Michigan area.

3. One resident of the Mississippi River area.

3m. One resident of the Lake Winnebago watershed area.

4. One resident from the inland area of the state.

(b) Each member of the commission must be able to assess the recreational water use problems in his or her geographical area of the state.

(c) No member of the commission may receive any salary for services performed as a commission member. Each commission member shall be reimbursed for actual and necessary expenses incurred while performing official duties.

(2) LAKE SUPERIOR COMMERCIAL FISHING BOARD. There is created a Lake Superior commercial fishing board attached to the department of natural resources under s. 15.03.

(a) The board shall be composed of 5 members who reside in counties contiguous to Lake Superior appointed by the governor to serve at the governor's pleasure.

(b) The 5 members shall include:

1. Three licensed, active commercial fishers.

2. One licensed, active wholesale fish dealer.

3. One state citizen.

(3) LAKE MICHIGAN COMMERCIAL FISHING BOARD. There is created a Lake Michigan commercial fishing board attached to the department of natural resources under s. 15.03.

(a) The board shall be composed of 7 members who reside in counties contiguous to Lake Michigan appointed by the governor to serve at the governor's pleasure.

(b) The 7 members shall include:

1. Five licensed, active commercial fishers; of these, 2 shall represent the fisheries of southern Green Bay and 3 the fisheries of northern Green Bay and Lake Michigan proper.

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2. One licensed, active wholesale fish dealer.

3. One state citizen.

(6) MANAGED FOREST LAND BOARD. There is created in the department of natural resources a managed forest land board consisting of the chief state forester or his or her designee and the following members appointed for 3−year terms:

(a) One member appointed from a list of 5 nominees submitted by the Wisconsin Counties Association.

(b) One member appointed from a list of 5 nominees submitted by the Wisconsin Towns Association.

(c) One member appointed from a list of 5 nominees submitted by an association that represents the interests of counties that have county forests within their boundaries.

(d) One member appointed from a list of 5 nominees submitted by the council on forestry.

History: 1977 c. 274, 418, 447; 1983 a. 27, 410; 1985 a. 29; 1989 a. 31; 1995 a. 27, s. 166m; 1997 a. 27; 2001 a. 16; 2005 a. 25; 2007 a. 20.

15.347 Same; councils. (2) DRY CLEANER ENVIRONMENTAL RESPONSE COUNCIL. There is created in the department of natural resources a dry cleaner environmental response council consisting of the following members appointed for 3−year terms:

(a) One member representing dry cleaning operations with annual gross receipts of less than $200,000.

(b) Two members representing dry cleaning operations with annual gross receipts of at least $200,000.

(c) One member representing wholesale distributors of dry cleaning solvent.

(d) One engineer, professional geologist, hydrologist or soil scientist with knowledge, experience or education concerning remediation of environmental contamination.

(e) One member representing manufacturers and sellers of dry cleaning equipment.

(4) NATURAL AREAS PRESERVATION COUNCIL. There is created in the department of natural resources a natural areas preservation council consisting of the following representatives:

(a) Two from the department of natural resources, appointed by the board of natural resources, one to serve as secretary.

(b) Four from the University of Wisconsin System, appointed by the board of regents of the University of Wisconsin System.

(c) One from the department of public instruction, appointed by the state superintendent of public instruction.

(d) One from the Milwaukee public museum, appointed by its board of directors.

(e) Three appointed by the council of the Wisconsin academy of sciences, arts and letters, at least one representing the private colleges in this state.

(7) SNOWMOBILE RECREATIONAL COUNCIL. There is created in the department of natural resources a snowmobile recreational council consisting of 15 members nominated by the governor, and with the advice and consent of the senate, appointed for staggered 3−year terms. Commencing on July 1, 1972, 5 members shall be appointed to serve for one year, 5 members for 2 years and 5 members for 3 years. Thereafter all terms shall be for 3 years with 5 positions on the council to expire each year. At least 5 members of the council shall be from the territory north, and at least 5 members shall be from the territory south, of a line running east and west through the south limits of the city of Stevens Point.

(8) SMALL BUSINESS ENVIRONMENTAL COUNCIL. There is created in the department of natural resources a small business environmental council consisting of the following members appointed for 3−year terms:

(a) Three members to represent the general public who are not owners, or representatives of owners, of small business stationary sources, as defined in s. 285.79 (1).

(b) One member who owns a small business stationary source, as defined in s. 285.79 (1), or who represents owners of small business stationary sources, appointed by the president of the senate.

(c) One member who owns a small business stationary source, as defined in s. 285.79 (1), or who represents owners of small business stationary sources, appointed by the speaker of the assembly.

(d) One member who owns a small business stationary source, as defined in s. 285.79 (1), or who represents owners of small business stationary sources, appointed by the minority leader of the senate.

(e) One member who owns a small business stationary source, as defined in s. 285.79 (1), or who represents owners of small business stationary sources, appointed by the minority leader of the assembly.

(f) One member appointed by the secretary of natural resources to represent the department of natural resources.

(12) METALLIC MINING COUNCIL. There is created in the department of natural resources a metallic mining council consisting of 9 persons representing a variety and balance of economic, scientific and environmental viewpoints. Members shall be appointed by the secretary of the department for staggered 3−year terms.

(13) GROUNDWATER COORDINATING COUNCIL. (a) *Creation.* There is created a groundwater coordinating council, attached to the department of natural resources under s. 15.03. The council shall perform the functions specified under s. 160.50.

(b) *Members.* The groundwater coordinating council shall consist of the following members:

1. The secretary of natural resources.

2. The secretary of safety and professional services.

3. The secretary of agriculture, trade and consumer protection.

4. The secretary of health services.

5. The secretary of transportation.

6. The president of the University of Wisconsin System.

7. The state geologist.

8. One person to represent the governor.

(c) *Designees.* Under par. (b), agency heads may appoint designees to serve on the council, if the designee is an employee or appointive officer of the agency who has sufficient authority to deploy agency resources and directly influence agency decision making.

(d) *Terms.* Members appointed under par. (b) 8. shall be appointed to 4−year terms.

(e) *Staff.* The state agencies with membership on the council and its subcommittees shall provide adequate staff to conduct the functions of the council.

(f) *Meetings.* The council shall meet at least twice each year and may meet at other times on the call of 3 of its members. Section 15.09 (3) does not apply to meetings of the council.

(g) *Annual report.* In August of each year, the council shall submit to the head of each agency with membership on the council, the governor and the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), a report which summarizes the operations and activities of the council during the fiscal year concluded on the preceding June 30, describes the state of the groundwater resource and its management and sets forth the recommendations of the council. The annual report shall include a description of the current groundwater quality in the state, an assessment of groundwater management programs, information on the implementation of ch. 160 and a list and description of current and anticipated groundwater problems. In each annual report, the council shall include the dissents of any council member to the activities and recommendations of the council.

(15) MILWAUKEE RIVER REVITALIZATION COUNCIL. (a) There is created in the department of natural resources a Milwaukee River revitalization council consisting of:

1. The secretary of natural resources or his or her designee.

2. The secretary of tourism or his or her designee.

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3. Eleven members appointed by the governor for 3−year terms.

4. At least one council member shall represent each of the priority watersheds, as identified under s. 281.65 (4) (cm), that are located in the Milwaukee River basin.

(b) The council shall elect its officers under s. 15.09 (2).

(d) Any member designated under par. (a) 1. or 2. or any member appointed under par. (a) 3. who is absent from 4 consecutive meetings vacates his or her position.

(16) STATE TRAILS COUNCIL. There is created in the department of natural resources a state trails council consisting of 11 members, appointed for 4−year terms, who are knowledgeable in, and who engage in one or more of, the various recreational uses of trails.

(17) COUNCIL ON RECYCLING. (a) *Creation and membership.* There is created a council on recycling, attached to the department of natural resources under s. 15.03, consisting of 7 members selected by the governor.

(c) *Terms.* Each member of the council on recycling designated under par. (a) shall serve a 4−year term expiring on the date that the next term of governor commences under s. 8.25 (4) (b) 2. or until a successor is appointed.

(18) INVASIVE SPECIES COUNCIL. (a) There is created an invasive species council, attached to the department of natural resources under s. 15.03.

(b) The council consists of the following members:

1. The secretary of natural resources or his or her designee.

2. The secretary of administration or his or her designee.

3. The secretary of agriculture, trade and consumer protection or his or her designee.

5. The secretary of tourism or his or her designee.

6. The secretary of transportation or his or her designee.

7. Seven other members appointed by the governor to serve 5−year terms.

(c) The members appointed under par. (b) 7. shall represent public and private interests that are affected by the presence of invasive species in this state.

(19) COUNCIL ON FORESTRY. (a) There is created in the department of natural resources a council of forestry consisting of:

1. The chief state forester or his or her designee.

2. One member of the senate.

3. One member of the senate.

4. One member of the assembly.

5. One member of the assembly.

6. One member who represents the interests of a forest products company that owns and manages large tracts of private forest land that supply raw materials to the forest products industry.

7. One member who represents the interests of owners of nonindustrial, private forest land who manage the land to produce ecological, economic, and social benefits.

8. One member who represents the interests of counties that have county forests within their boundaries.

9. One member who represents the interests of the paper and pulp industry.

10. One member who represents the interests of the lumber industry.

11. One member who represents the interests of nonprofit conservation organizations whose purposes include the conservation and use of forest resources.

12. One member who is a forester who engages in the practice of providing consultation services on forestry issues.

13. One member who represents the interests of schools of forestry within the state that have curricula in the management of forest resources that are accredited by the Society of American Foresters.

14. One member who represents the interests of persons who engage in the practice of conservation education.

15. One member who represents the interests of persons who are members of labor unions that are affiliated with the forestry industry.

16. One member who represents the interests of persons who are engaged in the practice of urban and community forestry.

17. One member who represents the interests of persons who are members of the Society of American Foresters.

18. One member who represents the interests of persons who are members of an organization of timber producers.

19. One person who represents the interests of persons who are engaged in an industry that uses secondary wood.

20. One member who is employed by the federal department of agriculture, forest service, who shall be a nonvoting member.

(b) Each member specified in par. (a) shall be appointed by the governor.

(d) The governor shall annually appoint a chairperson for the council from among its members before the first meeting of each year, and the chairperson, at the first meeting of each year, shall annually appoint the vice chairperson and secretary from among the council's members. Any of these appointees may be appointed for successive terms.

(e) The council shall meet 4 times each year and shall also meet on the call of the chairperson of the council or on the call of a majority of its members. Notwithstanding s. 15.09 (3), the council shall meet at such locations within this state as may be designated by the chairperson of the council or by a majority of its members.

(20) NONMOTORIZED RECREATION AND TRANSPORTATION TRAILS COUNCIL. (a) There is created in the department of natural resources a nonmotorized recreation and transportation trails council.

(b) The governor shall appoint members of the council to serve at the pleasure of the governor. In appointing the members of the council, the governor shall seek geographic diversity in the membership. The governor shall appoint members who personally undertake nonmotorized trail activities or who participate in organizations that own or maintain nonmotorized trails or that promote nonmotorized trail activities. The governor shall appoint members who represent as many as possible of the following groups, or who represent persons who engage in other nonmotorized trail activities or who have other interests related to nonmotorized trail uses identified by the governor:

1. Persons who engage in activities on water trails.

2. Pedestrians.

3. Persons who engage in horseback riding and buggy driving.

4. Persons who engage in long−distance hiking.

5. Persons who engage in nature−based activities, such as bird watching, nature study, hunting, and fishing.

6. Persons who engage in snow sports.

7. Persons who engage in bicycling of all forms, including trail riding, mountain biking, commuting, and long−distance bicycling.

8. Persons who represent local forests or parks.

9. Persons with physical disabilities who engage in nonmotorized trail activities.

10. Persons who are interested in tourism promotion.

11. Persons who represent tribal lands.

(c) If any member of the council is unable to attend a meeting of the council, the secretary of natural resources may appoint an alternate for that meeting to ensure that the full range of nonmotorized trails interests and activities is represented at the meeting.

(21) SPORTING HERITAGE COUNCIL. (a) There is created in the department of natural resources a sporting heritage council consisting of the following members:

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1. The secretary of natural resources, or his or her designee, who shall serve as chairperson.

2. One member, appointed by the governor.

3. Two members of the assembly, appointed by the speaker of the assembly, who may not be members of the same political party.

4. Two members of the senate, appointed by the senate majority leader, who may not be members of the same political party.

5. Five members, appointed by the natural resources board from nominations provided by sporting organizations that have as their primary objective the promotion of hunting, fishing, or trapping. Of the 5 members, one shall represent the interests of deer hunters, one shall represent the interests of bear hunters, one shall represent the interests of bird hunters, one shall represent the interests of anglers, and one shall represent the interests of furbearing animal hunters and trappers.

6. One member, appointed by the executive committee of the conservation congress, who is a member of the conservation congress.

(b) The members of the sporting heritage council appointed under par. (a) 2. to 6. shall be appointed for 3−year terms.

(c) The sporting heritage council shall meet at least one time each year.

History: 1971 c. 100 s. 23; 1971 c. 164, 211, 277, 307, 323; 1973 c. 12, 301, 318; 1975 c. 39, 198, 224, 412; 1977 c. 29 ss. 51, 52, 52d, 1650m (1), (4); 1977 c. 377; 1979 c. 34 ss. 39g, 39r, 2102 (39) (g), (58) (b); 1979 c. 221, 355; 1979 c. 361 s. 112; 1981 c. 346 s. 38; 1983 a. 410; 1985 a. 29 ss. 87h, 87m, 3200 (39); 1985 a. 65, 296, 332; 1987 a. 27, 186, 399; 1989 a. 11, 31, 335; 1991 a. 32, 39, 269, 302, 316; 1993 a. 16, 464; 1995 a. 27 ss. 169 to 175b, 9116 (5) and 9126 (19); 1995 a. 227; 1997 a. 27, 300; 2001 a. 109; 2005 a. 168; 2007 a. 20 s. 9121 (6) (a); 2009 a. 394; 2011 a. 32 ss. 117b, 125, 126; 2011 a. 104, 168.

15.348 Conservation congress. The conservation congress shall be an independent organization of citizens of the state and shall serve in an advisory capacity to the natural resources board on all matters under the jurisdiction of the board. Its records, budgets, studies and surveys shall be kept and established in conjunction with the department of natural resources. Its reports shall be an independent advisory opinion of such congress.

History: 1971 c. 179.

15.37 Department of public instruction; creation. There is created a department of public instruction under the direction and supervision of the state superintendent of public instruction.

History: 1971 c. 125; 1995 a. 27; 1997 a. 27.

15.373 Same; specified divisions. (1) DIVISION FOR LEARNING SUPPORT. There is created in the department of public instruction a division for learning support.

(2) DIVISION FOR LIBRARIES AND TECHNOLOGY. There is created in the department of public instruction a division for libraries and technology.

History: 1983 a. 27 s. 2200 (42); 1993 a. 335; 1995 a. 27 s. 9145 (1); 1997 a. 27; 2001 a. 48; 2011 a. 158.

15.374 Same; offices. (1) OFFICE OF EDUCATIONAL ACCOUNTABILITY. There is created an office of educational accountability in the department of public instruction. The director of the office shall be appointed by the state superintendent of public instruction.

History: 1993 a. 16; 1995 a. 27; 1997 a. 27.

15.375 Same; attached boards. (2) SCHOOL DISTRICT BOUNDARY APPEAL BOARD. There is created a school district boundary appeal board in the department of public instruction. The board shall consist of 12 school board members appointed by the state superintendent of public instruction for staggered 2−year terms and the state superintendent of public instruction or his or her designee. Four board members shall be school board members of school districts with small enrollments, 4 board members shall be school board members of school districts with medium enrollments and 4 board members shall be school board members of school districts with large enrollments. No 2 school board members of the board may reside within the boundaries of the same cooperative educational service agency.

History: 1979 c. 346; 1983 a. 27; 1989 a. 114, 299; 1991 a. 39; 1993 a. 399; 1995 a. 27 ss. 179 to 182, 9127 (1) and 9145 (1); 1997 a. 27.

Cross−reference: See also s. PI 2.05, Wis. adm. code.

15.377 Same; councils. (1) BLIND AND VISUAL IMPAIRMENT EDUCATION COUNCIL. (a) *Definition.* In this subsection, "visually impaired" has the meaning given in s. 115.51 (4).

(b) *Creation.* There is created a blind and visual impairment education council in the department of public instruction.

(c) *Members.* The blind and visual impairment education council shall consist of the following members, at least one of whom has been certified by the library of congress as a braille transcriber, appointed by the state superintendent for 3−year terms:

1. Three parents of children who are visually impaired.

2. Three persons who are members of an organization affiliated with persons who are visually impaired.

3. Three licensed teachers, one of whom is a teacher of the visually impaired, one of whom is an orientation and mobility teacher and one of whom is a general education teacher.

4. One school board member.

5. One school district administrator.

6. One school district special education director.

7. One cooperative educational service agency representative.

8. One person who has experience in educating the visually impaired or in educating teachers of the visually impaired and is affiliated with an institution of higher education.

9. Three other members, at least one of whom is visually impaired.

(2) DEAF AND HARD−OF−HEARING EDUCATION COUNCIL. There is created a deaf and hard−of−hearing education council in the department of public instruction. The council shall consist of the following members, at least 3 of whom must be hearing impaired, appointed by the state superintendent of public instruction for 3−year terms:

(a) Two parents of children who are hearing impaired.

(b) One licensed teacher of pupils who are hearing impaired.

(c) One person who is licensed as a speech−language pathologist under subch. II of ch. 459.

(d) One school district special education director.

(e) One person who is licensed as an audiologist under subch. II of ch. 459 and whose expertise is in educational audiology.

(f) One person who is experienced in educating the hearing impaired, or in educating teachers of the hearing impaired, and is affiliated with an institution of higher education.

(g) One person who is an instructor in a technical college interpreter training program.

(h) One person employed as an educational interpreter.

(i) Three other members.

(4) COUNCIL ON SPECIAL EDUCATION. There is created in the department of public instruction a council on special education to advise the state superintendent of public instruction about the unmet educational needs of children with disabilities, in developing evaluations and reporting on data to the federal department of education, in developing plans to address findings identified in federal monitoring reports, in developing and implementing policies relating to the coordination of services for children with disabilities and on any other matters upon which the state superintendent wishes the council's opinion; and to comment publicly on any rules proposed by the department of public instruction regarding the education of children with disabilities. The state superintendent of public instruction shall appoint the members of the council for 3−year terms, and shall ensure that a majority of the members are individuals with disabilities or parents of children

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with disabilities and that the council is representative of the state population, as determined by the state superintendent. The council shall be composed of individuals who are involved in, or concerned with, the education of children with disabilities, including all of the following:

(a) Teachers of regular education and teachers of special education.

(b) Representatives of institutions of higher education that train special education and related services personnel.

(c) State and local education officials.

(d) Administrators of programs for children with disabilities.

(e) Representatives of agencies other than the department of public instruction involved in the financing or delivery of related services to children with disabilities.

(f) Representatives of private schools, charter schools, and tribal schools, as defined in s. 115.001 (15m).

(g) At least one representative of a vocational, community or business organization that provides transition services for children with disabilities.

(h) Representatives from the department of corrections.

(i) Parents of children with disabilities.

(j) Individuals with disabilities.

(6) COUNCIL ON LIBRARY AND NETWORK DEVELOPMENT. There is created in the department of public instruction a council on library and network development composed of 19 members. Nine of the members shall be library science, audiovisual and informational science professionals representative of various types of libraries and information services, including public libraries, public library systems, school libraries, public and private academic libraries, special libraries and library educators. Ten of the members shall be public members who have demonstrated an interest in libraries or other types of information services. The members of the council shall be appointed for 3−year terms. The council shall meet 6 times annually and shall meet also on the call of the state superintendent of public instruction, and may meet at other times on the call of the chairperson or a majority of its members.

(8) PROFESSIONAL STANDARDS COUNCIL FOR TEACHERS. (a) *Definition.* In this subsection, "labor organization" means an association of employee organizations that represents the public policy, labor and professional interests of teachers.

(b) *Creation.* There is created a professional standards council for teachers in the department of public instruction.

(c) *Members.* The professional standards council for teachers shall consist of the following members, nominated by the state superintendent of public instruction and with the advice and consent of the senate appointed:

1. Two persons licensed and actively employed as elementary school teachers in the public schools, recommended by the largest statewide labor organization representing teachers.

2. Two persons licensed and actively employed as middle school, junior high school or senior high school teachers in the public schools, recommended by the largest statewide labor organization representing teachers.

3. Two persons licensed and actively employed as pupil services professionals, as defined in s. 118.257 (1) (c), in the public schools, recommended by the largest statewide labor organization representing teachers.

4. One person licensed and actively employed as a special education teacher in the public schools, recommended by the largest statewide labor organization representing teachers.

5. Two other persons licensed and actively employed as teachers in the public schools, recommended by the largest statewide labor organization representing teachers.

5m. One person licensed as a teacher and actively employed in a private school, recommended by the Wisconsin Council of Religious and Independent Schools.

6. One person actively employed as a public school district administrator, recommended by the Wisconsin Association of School District Administrators.

7. One person actively employed as a public school principal, recommended by the Association of Wisconsin School Administrators.

8. One faculty member of a department or School of Education in the University of Wisconsin System, recommended by the president of the University of Wisconsin System.

9. One faculty member of a department or School of Education in a private college in Wisconsin, recommended by the Wisconsin Association of Independent Colleges and Universities.

10. One additional faculty member, appointed from the list of persons recommended under subd. 8. or 9.

11. Two members of public school boards, recommended by the Wisconsin Association of School Boards.

12. One person who is a parent of a child who is enrolled in a public school.

13. One person who is a student enrolled in a teacher preparatory program, located in this state, that leads to initial licensure as a teacher.

14. One person licensed as a teacher and actively employed in a tribal school, as defined in s. 115.001 (15m), recommended by a federally recognized American Indian tribe or band in this state that has a tribal school.

(d) *Recommendations.* For each vacancy on the council under par. (c) 1. to 9. and 11., the entity authorized to recommend a member shall provide the names of 3 qualified persons to the state superintendent of public instruction.

(e) *Terms.* Members of the council shall serve 3−year terms except that the student appointed under par. (c) 13. shall serve a 2−year term.

(f) *Meetings.* The council shall meet on a regular basis and at least twice each year.

History: 1971 c. 152, 211, 292; 1973 c. 89, 220, 336; 1977 c. 29; 1979 c. 346, 347; 1985 a. 29, 177; 1987 a. 27; 1989 a. 31; 1993 a. 184, 399; 1995 a. 27 ss. 183 to 187, 9126 (19), 9145 (1); 1997 a. 27, 164, 298; 1999 a. 9, 100, 186; 2001 a. 57; 2005 a. 121; 2009 a. 302.

15.40 Department of safety and professional services; creation. There is created a department of safety and professional services under the direction and supervision of the secretary of safety and professional services.

History: 1971 c. 270 s. 104; 1975 c. 39; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418 ss. 24 to 27; 2011 a. 32.

15.405 Same; attached boards and examining boards. **(1)** ACCOUNTING EXAMINING BOARD. There is created an accounting examining board in the department of safety and professional services. The examining board shall consist of 7 members, appointed for staggered 4−year terms. Five members shall hold certificates as certified public accountants and be eligible for licensure to practice in this state. Two members shall be public members.

(1m) BUILDING INSPECTOR REVIEW BOARD. (a) There is created a building inspector review board which is attached to the department of safety and professional services under s. 15.03 that consists of the following members:

1. The senate majority leader or his or her designee.

2. The speaker of the assembly or his or her designee.

3. The secretary of safety and professional services or his or her designee.

4. A member representing building contractors and building developers who is actively engaged in the on−site construction of public buildings, places of employment, or one−family and two−family dwellings.

5. A building inspector certified by the department of safety and professional services, to inspect public buildings, places of employment, or one−family and two−family dwellings.

(b) The members appointed under par. (a) 4. and 5. shall serve for 5−year terms.

(2) EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS. There is created an examining board of architects, landscape architects, professional engineers, designers and land surveyors in the department of safety and professional services. Any professional member appointed to the examining board shall be registered to practice architecture, landscape architecture, professional engineering, the design of engineering systems or land surveying under ch. 443. The examining board shall consist of the following members appointed for 4−year terms: 3 architects, 3 landscape architects, 3 professional engineers, 3 designers, 3 land surveyors and 10 public members.

(a) In operation, the examining board shall be divided into an architect section, a landscape architect section, an engineer section, a designer section and a land surveyor section. Each section shall consist of the 3 members of the named profession appointed to the examining board and 2 public members appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(b) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of registration, and all other matters of interest to either the architect, landscape architect, engineer, designer or land surveyor section shall be acted upon solely by the interested section.

(c) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(2m) EXAMINING BOARD OF PROFESSIONAL GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS. (a) There is created in the department of safety and professional services an examining board of professional geologists, hydrologists and soil scientists consisting of the following members appointed for 4−year terms:

1. Three members who are professional geologists licensed under ch. 470.

2. Three members who are professional hydrologists licensed under ch. 470.

3. Three members who are professional soil scientists licensed under ch. 470.

4. Three public members.

(b) In operation, the examining board shall be divided into a professional geologist section, a professional hydrologist section and a professional soil scientist section. Each section shall consist of the 3 members of the named profession appointed to the examining board and one public member appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(c) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of licenses, and all other matters of interest to either the professional geologist, hydrologist or soil scientist section shall be acted upon solely by the interested section.

(d) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the matter is of interest.

(3) AUCTIONEER BOARD. (a) There is created in the department of safety and professional services an auctioneer board consisting of the following members appointed for 4−year terms:

1. Four members, each of whom is registered under ch. 480 as an auctioneer, or is an auction company representative, as defined in s. 480.01 (3), of an auction company that is registered under ch. 480 as an auction company.

2. Three public members.

(b) No member of the board may serve more than 2 terms.

(3m) CEMETERY BOARD. (a) In this subsection:

1. "Business representative" has the meaning given in s. 452.01 (3k).

2. "Licensed cemetery authority" means a cemetery authority that is licensed under s. 440.91 (1).

(b) There is created in the department of safety and professional services a cemetery board consisting of the following members, who shall serve 4−year terms:

1. Four members, each of whom is a business representative of a licensed cemetery authority.

2. Two public members.

(c) No member of the cemetery board may be a business representative of a religious cemetery authority, unless the religious cemetery is regulated by the board.

(d) No member of the cemetery board may serve more than 2 terms.

(5) CHIROPRACTIC EXAMINING BOARD. There is created a chiropractic examining board in the department of safety and professional services. The chiropractic examining board shall consist of 6 members, appointed for staggered 4−year terms. Four members shall be graduates from a school of chiropractic and licensed to practice chiropractic in this state. Two members shall be public members. No person may be appointed to the examining board who is in any way connected with or has a financial interest in any chiropractic school.

(5g) CONTROLLED SUBSTANCES BOARD. There is created in the department of safety and professional services a controlled substances board consisting of the attorney general, the secretary of health services and the secretary of agriculture, trade and consumer protection, or their designees; the chairperson of the pharmacy examining board or a designee; and one psychiatrist and one pharmacologist appointed for 3−year terms.

(6) DENTISTRY EXAMINING BOARD. There is created a dentistry examining board in the department of safety and professional services consisting of the following members appointed for 4−year terms:

(a) Six dentists who are licensed under ch. 447.

(b) Three dental hygienists who are licensed under ch. 447. Notwithstanding s. 15.08 (1m) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations for dental hygienists.

(c) Two public members.

(6m) HEARING AND SPEECH EXAMINING BOARD. There is created a hearing and speech examining board in the department of safety and professional services consisting of the following members appointed for 4−year terms:

(a) Three hearing instrument specialists licensed under subch. I of ch. 459.

(b) One otolaryngologist.

(c) Two audiologists licensed under subch. II of ch. 459.

(d) Two speech−language pathologists licensed under subch. II of ch. 459.

(e) Two public members. One of the public members shall be a hearing aid user.

(7) MEDICAL EXAMINING BOARD. (a) There is created a medical examining board in the department of safety and professional services.

(b) The medical examining board shall consist of the following members appointed for staggered 4−year terms:

1. Nine licensed doctors of medicine.

2. One licensed doctor of osteopathy.

3. Three public members.

(c) The chairperson of the injured patients and families compensation fund peer review council under s. 655.275 shall serve as a nonvoting member of the medical examining board.

(7c) MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING BOARD. (a) There is created a marriage and family therapy, professional counseling, and social work examining board in the department of safety and profes-

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sional services consisting of the following members appointed for 4−year terms:

1. Four social worker members who are certified or licensed under ch. 457.

2. Three marriage and family therapist members who are licensed under ch. 457.

3. Three professional counselor members who are licensed under ch. 457.

4. Three public members who represent groups that promote the interests of consumers of services provided by persons who are certified or licensed under ch. 457.

(am) The 4 members appointed under par. (a) 1. shall consist of the following:

1. One member who is certified under ch. 457 as an advanced practice social worker.

2. One member who is certified under ch. 457 as an independent social worker.

3. One member who is licensed under ch. 457 as a clinical social worker.

4. At least one member who is employed as a social worker by a federal, state or local governmental agency.

(b) In operation, the examining board shall be divided into a social worker section, a marriage and family therapist section and a professional counselor section. The social worker section shall consist of the 4 social worker members of the examining board and one of the public members of the examining board. The marriage and family therapist section shall consist of the 3 marriage and family therapist members of the examining board and one of the public members of the examining board. The professional counselor section shall consist of the 3 professional counselor members of the examining board and one of the public members of the examining board.

(c) All matters pertaining to granting, denying, limiting, suspending, or revoking a certificate or license under ch. 457, and all other matters of interest to either the social worker, marriage and family therapist, or professional counselor section shall be acted upon solely by the interested section of the examining board.

(d) All matters that the examining board determines are of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(e) Notwithstanding s. 15.08 (4) (a), at a joint meeting of all sections of the examining board, a majority of the examining board constitutes a quorum to do business only if at least 8 members are present at the meeting. At a meeting of a section of the examining board or a joint meeting of 2 or more of the sections of the examining board, each member who is present has one vote, except as provided in par. (f).

(f) At a joint meeting of the social worker section and one or both of the other sections of the examining board, each member who is present has one vote, except that the social worker members each have three−fourths of a vote if all 4 of those members are present.

(7e) RADIOGRAPHY EXAMINING BOARD. There is created in the department of safety and professional services a radiography examining board consisting of the following 7 members appointed for 4−year terms:

(a) Three members who practice radiography and who are licensed under s. 462.03 (2).

(b) One member who is a physician licensed under s. 448.04 (1) (a) and certified in radiology by the American Board of Radiology, the American Osteopathic Board of Radiology, the British Royal College of Radiologists, or the Royal College of Physicians and Surgeons of Canada.

(c) One member who is a radiologic physicist certified by the American Board of Radiology.

(d) Two public members.

(7g) BOARD OF NURSING. There is created a board of nursing in the department of safety and professional services. The board of nursing shall consist of the following members appointed for staggered 4−year terms: 5 currently licensed registered nurses under ch. 441; 2 currently licensed practical nurses under ch. 441; and 2 public members. Each registered nurse member shall have graduated from a program in professional nursing and each practical nurse member shall have graduated from a program in practical nursing accredited by the state in which the program was conducted.

(7m) NURSING HOME ADMINISTRATOR EXAMINING BOARD. There is created a nursing home administrator examining board in the department of safety and professional services consisting of 9 members appointed for staggered 4−year terms and the secretary of health services or a designee, who shall serve as a nonvoting member. Five members shall be nursing home administrators licensed in this state. One member shall be a physician. One member shall be a nurse licensed under ch. 441. Two members shall be public members. No more than 2 members may be officials or full−time employees of this state.

(7r) PHYSICAL THERAPY EXAMINING BOARD. There is created in the department of safety and professional services a physical therapy examining board consisting of the following members appointed for staggered 4−year terms:

(a) Three physical therapists who are licensed under subch. III of ch. 448.

(am) One physical therapist assistant licensed under subch. III of ch. 448.

(b) One public member.

(8) OPTOMETRY EXAMINING BOARD. There is created an optometry examining board in the department of safety and professional services. The optometry examining board shall consist of 7 members appointed for staggered 4−year terms. Five of the members shall be licensed optometrists in this state. Two members shall be public members.

(9) PHARMACY EXAMINING BOARD. There is created a pharmacy examining board in the department of safety and professional services. The pharmacy examining board shall consist of 7 members appointed for staggered 4−year terms. Five of the members shall be licensed to practice pharmacy in this state. Two members shall be public members.

(10m) PSYCHOLOGY EXAMINING BOARD. There is created in the department of safety and professional services a psychology examining board consisting of 6 members appointed for staggered 4−year terms. Four of the members shall be psychologists licensed in this state. Each of the psychologist members shall represent a different specialty area within the field of psychology. Two members shall be public members.

(10r) REAL ESTATE APPRAISERS BOARD. (a) There is created a real estate appraisers board in the department of safety and professional services consisting of the following members appointed for 4−year terms:

1. Three appraisers who are certified or licensed under ch. 458.

2. One assessor, as defined in s. 458.09 (1).

3. Three public members.

(b) Of the appraiser members of the board, one shall be certified under s. 458.06 as a general appraiser, one shall be certified under s. 458.06 as a residential appraiser and one shall be licensed under s. 458.08 as an appraiser. No public member of the board may be connected with or have any financial interest in an appraisal business or in any other real estate−related business. Section 15.08 (1m) (am) applies to the public members of the board. No member of the board may serve more than 2 consecutive terms.

(c) Notwithstanding s. 15.07 (4), a majority of the board constitutes a quorum to do business only if at least 2 of the mem-

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bers present are appraiser members and at least one of the members present is a public member.

(11m) REAL ESTATE EXAMINING BOARD. There is created a real estate examining board in the department of safety and professional services. The real estate examining board shall consist of 7 members appointed to staggered 4−year terms. Five of the members shall be real estate brokers or salespersons licensed in this state. Two members shall be public members. No member may serve more than 2 terms.

(12) VETERINARY EXAMINING BOARD. There is created a veterinary examining board in the department of safety and professional services. The veterinary examining board shall consist of 8 members appointed for staggered 4−year terms. Five of the members shall be licensed veterinarians in this state. One member shall be a veterinary technician certified in this state. Two members shall be public members. No member of the examining board may in any way be financially interested in any school having a veterinary department or a course of study in veterinary or animal technology.

(16) FUNERAL DIRECTORS EXAMINING BOARD. There is created a funeral directors examining board in the department of safety and professional services. The funeral directors examining board shall consist of 6 members appointed for staggered 4−year terms. Four members shall be licensed funeral directors under ch. 445 in this state. Two members shall be public members.

(17) COSMETOLOGY EXAMINING BOARD. There is created a cosmetology examining board in the department of safety and professional services. The cosmetology examining board shall consist of 9 members appointed for 4−year terms. Four members shall be licensed aestheticians or cosmetologists, 2 members shall be public members, one member shall be a representative of a private school of cosmetology, one member shall be a representative of a public school of cosmetology and one member shall be a licensed electrologist. Except for the 2 members representing schools, no member may be connected with or have any financial interest in a cosmetology school.

History: 1973 c. 90, 156; 1975 c. 39, 86, 199, 200, 383, 422; 1977 c. 26, 29, 203; 1977 c. 418; 1979 c. 34 ss. 45, 47 to 52; 1979 c. 221, 304; 1981 c. 94 ss. 5, 9; 1981 c. 356; 1983 a. 27, 403, 485, 538; 1985 a. 340; 1987 a. 257 s. 2; 1987 a. 264, 265, 316; 1989 a. 316, 340; 1991 a. 39, 78, 160, 189, 269; 1993 a. 16, 102, 463, 465, 491; 1995 a. 27 s. 9126 (19); 1995 a. 225; 1995 a. 305 s. 1; 1995 a. 321, 417; 1997 a. 96, 252, 300; 2001 a. 16, 80; 2003 a. 111, 270; 2005 a. 25, 314; 2007 a. 20 s. 9121 (6) (a); 2009 a. 106; 2009 a. 149 s. 3; 2011 a. 32 ss. 110, 130 to 153; 2011 a. 190.

An incumbent real estate examining board member is entitled to hold over in office until a successor is duly appointed and confirmed by the senate. The board was without authority to reimburse the nominee for expenses incurred in attending a meeting during an orientation period prior to confirmation. 63 Atty. Gen. 192.

15.406 Same; attached affiliated credentialing boards. **(2)** DIETITIANS AFFILIATED CREDENTIALING BOARD. There is created in the department of safety and professional services, attached to the medical examining board, a dietitians affiliated credentialing board consisting of the following members appointed for 4−year terms:

(a) Three dietitians who are certified under subch. V of ch. 448.

(b) One public member.

(3) PODIATRY AFFILIATED CREDENTIALING BOARD. There is created in the department of safety and professional services, attached to the medical examining board, a podiatry affiliated credentialing board consisting of the following members appointed for 4−year terms:

(a) Three podiatrists who are licensed under subch. IV of ch. 448.

(b) One public member.

(4) ATHLETIC TRAINERS AFFILIATED CREDENTIALING BOARD. There is created in the department of safety and professional services, attached to the medical examining board, an athletic trainers affiliated credentialing board consisting of the following members appointed for 4−year terms:

(a) Four athletic trainers who are licensed under subch. VI of ch. 448 and who have not been issued a credential in athletic training by a governmental authority in a jurisdiction outside this state. One of the athletic trainer members may also be licensed under ch. 446 or 447 or subch. II, III or IV of ch. 448.

(b) One member who is licensed to practice medicine and surgery under subch. II of ch. 448 and who has experience with athletic training and sports medicine.

(c) One public member.

(5) OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of safety and professional services, attached to the medical examining board, an occupational therapists affiliated credentialing board consisting of the following members appointed for 4−year terms:

(a) Three occupational therapists who are licensed under subch. VII of ch. 448.

(b) Two occupational therapy assistants who are licensed under subch. VI of ch. 448.

(c) Two public members.

(6) MASSAGE THERAPY AND BODYWORK THERAPY AFFILIATED CREDENTIALING BOARD. (a) There is created in the department of safety and professional services, attached to the medical examining board, a massage therapy and bodywork therapy affiliated credentialing board. The affiliated credentialing board shall consist of the following 7 members appointed for 4−year terms:

1. Six massage therapists or bodywork therapists licensed under ch. 460 who have engaged in the practice of massage therapy or bodywork therapy for at least 2 years preceding appointment. One member appointed under this subdivision shall be a representative of a massage therapy or bodywork therapy school approved by the educational approval board under s. 38.50. One member appointed under this subdivision shall be a representative of a massage therapy or bodywork therapy program offered by a technical college in this state. No other members appointed under this subdivision shall be directly or indirectly affiliated with a massage therapy or bodywork therapy school or program.

2. One public member who satisfies the requirements under s. 460.03 (2m) (b).

(b) In appointing members under par. (a), the governor shall ensure, to the maximum extent practicable, that the membership of the affiliated credentialing board is diverse, based on all of the following factors:

1. Massage or bodywork therapies practiced in this state.

2. Affiliation and nonaffiliation with a professional association for the practice of massage therapy or bodywork therapy.

3. Professional associations with which massage therapists or bodywork therapists in this state are affiliated.

4. Practice in urban and rural areas in this state.

History: 1993 a. 107, 443; 1997 a. 75, 175; 1999 a. 9, 180; 2001 a. 70; 2009 a. 113, 149; 2009 a. 355 s. 3m; 2011 a. 32.

15.407 Same; councils. **(1m)** RESPIRATORY CARE PRACTITIONERS EXAMINING COUNCIL. There is created a respiratory care practitioners examining council in the department of safety and professional services and serving the medical examining board in an advisory capacity in the formulating of rules to be promulgated by the medical examining board for the regulation of respiratory care practitioners. The respiratory care practitioners examining council shall consist of 3 certified respiratory care practitioners, each of whom shall have engaged in the practice of respiratory care for at least 3 years preceding appointment, one physician and one public member. The respiratory care practitioner and physician members shall be appointed by the medical examining board. The members of the examining council shall serve 3−year terms. Section 15.08 (1) to (4) (a) and (6) to (10) shall apply to the respiratory care practitioners examining council, except that members of the examining council may serve more than 2 consecutive terms.

(2) COUNCIL ON PHYSICIAN ASSISTANTS. There is created a council on physician assistants in the department of safety and professional services and serving the medical examining board in an advisory capacity. The council's membership shall consist of:

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(b) One public member appointed by the governor for a 4−year term.

(c) Three physician assistants selected by the medical examining board for staggered 4−year terms.

(d) One person who teaches physician assistants and is selected by the medical examining board for a 4−year term.

(2m) There is created a perfusionists examining council in the department of safety and professional services and serving the medical examining board in an advisory capacity. The council shall consist of the following members appointed for 3−year terms:

(a) Three licensed perfusionists appointed by the medical examining board.

(b) One physician who is a cardiothoracic surgeon or a cardiovascular anesthesiologist and who is appointed by the medical examining board.

(c) One public member appointed by the governor.

(3) EXAMINING COUNCILS; BOARD OF NURSING. The following examining councils are created in the department of safety and professional services to serve the board of nursing in an advisory capacity. Section 15.08 (1) to (4) (a) and (6) to (10), applies to the examining councils.

(a) *Registered nurses.* There is created an examining council on registered nurses to consist of 4 registered nurses of not less than 3 years' experience in nursing, appointed by the board of nursing for staggered 4−year terms.

(b) *Practical nurses.* There is created an examining council on licensed practical nurses to consist of one registered nurse, 3 licensed practical nurses and one registered nurse who is a faculty member of an accredited school for practical nurses, appointed by the board of nursing for staggered 3−year terms. No member may be a member of the examining council on registered nurses.

(5) COUNCIL ON REAL ESTATE CURRICULUM AND EXAMINATIONS. There is created in the department of safety and professional services a council on real estate curriculum and examinations consisting of 7 members appointed for 4−year terms. Five members shall be real estate brokers or salespersons licensed under ch. 452 and 2 members shall be public members. Of the real estate broker or salesperson members, one member shall be a member of the real estate examining board appointed by the real estate examining board, at least 2 members shall be licensed real estate brokers with at least 5 years of experience as real estate brokers, and at least one member shall be a licensed real estate salesperson with at least 2 years of experience as a real estate salesperson. Of the 2 public members, at least one member shall have at least 2 years of experience in planning or presenting real estate educational programs. No member of the council may serve more than 2 consecutive terms.

(6) PHARMACIST ADVISORY COUNCIL. There is created a pharmacist advisory council in the department of safety and professional services and serving the pharmacy examining board in an advisory capacity. The council shall consist of the following members appointed for 3−year terms:

(a) Two pharmacists licensed under ch. 450 appointed by the chairperson of the pharmacy examining board.

(b) One physician licensed under subch. II of ch. 448 appointed by the chairperson of the medical examining board.

(c) One nurse licensed under ch. 441 appointed by the chairperson of the board of nursing.

(7) COUNCIL ON ANESTHESIOLOGIST ASSISTANTS; DUTIES. There is created a council on anesthesiologist assistants in the department of safety and professional services and serving the medical examining board in an advisory capacity. The council's membership shall consist of the following members, who shall be selected from a list of recommended appointees submitted by the president of the Wisconsin Society of Anesthesiologists, Inc., after the president of the Wisconsin Society of Anesthesiologists, Inc., has considered the recommendation of the Wisconsin Academy of Anesthesiologist Assistants for the appointee under par. (b), and who shall be appointed by the medical examining board for 3−year terms:

(a) One member of the medical examining board.

(b) One anesthesiologist assistant licensed under s. 448.04 (1) (g).

(c) Two anesthesiologists.

(d) One lay member.

(8) CREMATORY AUTHORITY COUNCIL. There is created a crematory authority council in the department of safety and professional services consisting of the secretary of safety and professional services or a designee of the secretary, who shall serve as a nonvoting member, and the following persons appointed for 3−year terms:

(a) Three persons licensed as funeral directors under ch. 445 who operate crematories.

(b) Three representatives of cemetery authorities, as defined in s. 157.061 (2), who operate crematories.

(c) One public member.

(9) SIGN LANGUAGE INTERPRETER COUNCIL. (a) There is created a sign language interpreter council in the department of safety and professional services consisting of the secretary of safety and professional services or a designee of the secretary and the following 8 members nominated by the governor, and with the advice and consent of the senate appointed, for 3−year terms:

1. Five deaf or hard of hearing individuals who are or have been clients of a sign language interpreter, at least one of whom is a graduate of a residential school for the deaf or hard of hearing and at least one of whom is a graduate of a private or public school that is not a residential school for the deaf or hard of hearing.

2. Two interpreters licensed under s. 440.032, at least one of whom holds a renewable license under s. 440.032 (3) (a).

3. One individual who is not deaf or hard of hearing and who has obtained, or represents an entity that has obtained, sign language interpreter services for the benefit of another who is deaf or hard of hearing.

(b) If possible, the governor shall nominate individuals under par. (a) 1. to 3. from diverse locations within the state.

(10) DWELLING CODE COUNCIL. (a) There is created in the department of safety and professional services, a dwelling code council, consisting of 11 members appointed for staggered 2−year terms. Each member shall represent at least one of the following groups:

1. Building trade labor organizations.

2. Certified building inspectors employed by local units of government.

3. Building contractors actively engaged in on−site construction of one− and 2−family housing.

4. Manufacturers, retailers, or installers of manufactured or modular one− and 2−family housing.

5. Architects, engineers, or designers who are registered under ch. 443 and who are actively engaged in the design or evaluation of one− and 2−family housing.

6. The construction material supply industry.

7. Remodeling contractors actively engaged in the remodeling of one−family and 2−family housing.

8. Persons with disabilities, as defined in s. 106.50 (1m) (g).

9. Fire prevention professionals.

(b) An employee of the department designated by the secretary of safety and professional services shall serve as secretary, but shall not be a member, of the council. The council shall meet at least twice a year. Seven members of the council shall constitute a quorum. For the purpose of conducting business a majority vote of the council is required.

(11) CONTRACTOR CERTIFICATION COUNCIL. There is created in the department of safety and professional services a contractor certification council consisting of 3 members who are building

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contractors holding certificates of financial responsibility under s. 101.654 and who are involved in, or who have demonstrated an interest in, continuing education for building contractors. The members shall be appointed by the secretary of safety and professional services for 3−year terms.

(12) MULTIFAMILY DWELLING CODE COUNCIL. (a) There is created in the department of safety and professional services a multifamily dwelling code council consisting of the following members appointed for 3−year terms:

1. Two members representing labor organizations for the skilled building trades, each of whom is actively engaged in his or her trade.

2. Two members representing municipal inspectors, one of whom is actively engaged in inspections in a county whose population is less than 50,000 and one of whom is actively engaged in inspections in a county whose population is 50,000 or more.

3. Two members representing the fire services, each of whom is actively engaged in fire service work and at least one of whom is a fire chief.

4. Two members representing building contractors and building developers, each of whom is actively engaged in on−site construction of multifamily housing.

5. Three members representing manufacturers of materials or suppliers of finished products in one of 5 product categories, consisting of cement products, concrete block products, gypsum products, metal products and wood products. Each member shall represent the manufacturers or suppliers of a different product category, and each member appointed to a 3−year term shall represent the manufacturers or suppliers of the product category that has not been represented by any of the 3 members for the previous 2 years. Each member shall be actively engaged in the business of manufacturing materials or supplying finished products for multifamily housing.

6. One member representing architects, engineers and designers who is actively engaged in the design or evaluation of multifamily housing.

7. Two members representing the public, at least one of whom is an advocate of fair housing.

(b) An employee of the department shall serve as nonvoting secretary of the council.

(c) The council shall meet at least 2 times annually.

(d) Nine members of the council shall constitute a quorum. For the purpose of conducting business a majority vote of the council is required, except that at least 10 members of the council are required to vote affirmatively to recommend changes in the statutes or administrative rules.

(13) MANUFACTURED HOUSING CODE COUNCIL. (a) There is created in the department of safety and professional services a manufactured housing code council consisting of the following members appointed by the secretary of safety and professional services for 3−year terms:

1. Two members representing manufacturers of manufactured homes.

2. Two members representing manufactured home dealers.

3. Two members representing owners of manufactured home communities.

4. Two members representing installers of manufactured homes.

5. One member representing an association of the manufactured housing industry in Wisconsin.

6. One member representing suppliers of materials or services to the manufactured housing industry.

7. One member representing the public.

8. One member representing labor.

9. One member representing inspectors of manufactured homes.

(b) The council shall meet at least twice a year. An employee of the department designated by the secretary of the department shall serve as nonvoting secretary of the council.

(14) CONVEYANCE SAFETY CODE COUNCIL. (a) There is created in the department of safety and professional services a conveyance safety code council consisting of the following members appointed for 3−year terms:

1. One member representing a manufacturer of elevators.

2. One member representing an elevator servicing business.

3. One member representing an architectural design or elevator consulting profession.

4. One member representing a labor organization whose members are involved in the installation, maintenance, and repair of elevators.

5. One member representing a city, village, town, or county in this state.

6. One member representing an owner or manager of a building in this state containing an elevator.

7. One member representing the public.

8. A building contractor involved in commercial construction that includes the construction or installation of conveyances, as defined in s. 101.981 (1) (c).

9. The secretary of safety and professional services, or his or her designee.

10. An employee of the department of safety and professional services, designated by the secretary of safety and professional services, who is familiar with commercial building inspections.

(b) The council shall meet at least twice a year. The employee of the department of safety and professional services designated by the secretary of safety and professional services under par. (a) 10. shall serve as nonvoting secretary of the council.

(16) PLUMBERS COUNCIL. There is created in the department of safety and professional services a plumbers council consisting of 3 members. One member shall be an employee of the department of safety and professional services, selected by the secretary of safety and professional services, to serve as the secretary of the council. Two members, one a master plumber and one a journeyman plumber, shall be appointed by the secretary of safety and professional services for 2−year terms.

(17) AUTOMATIC FIRE SPRINKLER SYSTEM CONTRACTORS AND JOURNEYMEN COUNCIL. There is created in the department of safety and professional services an automatic fire sprinkler system contractors and journeymen council consisting of 5 members. One member shall be an employee of the department of safety and professional services, selected by the secretary of safety and professional services, to serve as secretary of the council. Two members shall be licensed journeymen automatic fire sprinkler fitters and 2 members shall be persons representing licensed automatic fire sprinkler contractors, all appointed by the secretary of safety and professional services for staggered 4−year terms.

History: 1973 c. 149; 1975 c. 39, 86, 199, 383, 422; 1977 c. 418; 1979 c. 34 ss. 46, 53; 1981 c. 390 s. 252; 1985 a. 332 s. 251 (1); 1987 a. 399; 1989 a. 229, 316, 341, 359; 1991 a. 316; 1993 a. 105, 107; 1997 a. 68, 175; 1997 a. 237 s. 727m; 1999 a. 32, 180, 186; 2001 a. 74, 89; 2005 a. 31; 2009 a. 355, 356, 360; 2011 a. 32 ss. 112 to 114, 116, 118 to 120, 159 to 166; 2011 a. 146, 160.

15.43 Department of revenue; creation. There is created a department of revenue under the direction and supervision of the secretary of revenue.

15.433 Same; specified divisions. (1) LOTTERY DIVISION. There is created in the department of revenue a lottery division.

History: 1995 a. 27.

15.435 Same; attached boards. (1) INVESTMENT AND LOCAL IMPACT FUND BOARD. (a) *Creation; membership.* There is created an investment and local impact fund board, attached to the department of revenue under s. 15.03, consisting of the following members:

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1. The chief executive officer of the Wisconsin Economic Development Corporation and the secretary of revenue or their designees.

2. Three public members.

3. Five local officials consisting of 2 municipal officials, 2 county officials, and one school board member.

4. One Native American.

(b) *Terms.* The public members, local officials and Native American shall be appointed for staggered 4−year terms.

(c) *Vacancies.* If a municipal or county official or a school board member leaves office while serving on the board, the member's position on the board shall be considered vacant until a successor is appointed under s. 15.07 (1) (b).

(d) *Qualifications.* 1. One of the public members shall reside in a town in which a metalliferous mineral ore body is known to exist.

2. One of the public members shall reside in a county in which metalliferous mineral development is occurring or in an adjacent county.

3. One of the local officials shall reside in a county or school district in which metalliferous mineral development is occurring or in an adjacent county or school district; and

4. One local official shall reside in a county or school district in which metalliferous minerals are extracted or an adjacent county or school district.

5. The Native American shall reside in a municipality in which a metalliferous mineral ore body is known to exist.

(e) *Recommendations.* 1. One public member shall be recommended by the town boards in towns in which a metalliferous mineral ore body is known to exist. Preference shall be given to the appointment of a public member who resides in a township in which the development of a metalliferous mineral ore body is occurring.

2. One municipal official member shall be recommended by the League of Wisconsin Municipalities.

3. One municipal official member shall be recommended by the Wisconsin Towns Association.

4. The school board member shall be recommended by the Wisconsin Association of School Boards.

5. The county official members shall be recommended by the Wisconsin Counties Association.

6. The Native American member shall be recommended by the Great Lakes Inter−Tribal Council, Inc. Preference should be given to the appointment of a Native American who resides in a town in which the development of a metalliferous mineral ore body is occurring.

(g) *Assistance; advice.* The board may request of any state agency such assistance as may be necessary for the board to fulfill its duties.

History: 1977 c. 31, 423; 1979 c. 63; 1979 c. 361 s. 112; 1981 c. 86, 391; 1983 a. 36 s. 96 (4); 1983 a. 192 ss. 20, 303 (7); 1985 a. 29; 1987 a. 27; 1989 a. 31; 1995 a. 27 ss. 188, 189 and 9116 (5); 1997 a. 27; 2001 a. 103; 2005 a. 149; 2011 a. 32.

15.44 Department of tourism. There is created a department of tourism under the direction and supervision of the secretary of tourism.

History: 1995 a. 27.

15.445 Same; attached boards. (1) ARTS BOARD. There is created an arts board in the department of tourism. The arts board shall consist of 15 members appointed for 3−year terms who are residents of this state and who are known for their concern for the arts. At least 2 members shall be from the northwest portion of this state, at least 2 members shall be from the northeast portion of this state, at least 2 members shall be from the southwest portion of this state, and at least 2 members shall be from the southeast portion of this state.

(2) KICKAPOO RESERVE MANAGEMENT BOARD. (a) *Creation.* There is created a Kickapoo reserve management board which is attached to the department of tourism under s. 15.03.

(b) *Membership.* The board consists of the following members appointed to serve for 3−year terms:

1. Four members who are residents of the area composed of the villages of La Farge and Ontario, the towns of Stark and Whitestown and the school districts encompassing the villages of La Farge and Ontario.

2. Two members who are residents of that portion of the Kickapoo River watershed, as determined by the department of natural resources, that lies outside of the area specified in subd. 1.

3. Three members who are not residents of the watershed specified in subd. 2., one of whom shall be an advocate for the environment, one of whom shall have a demonstrated interest in education and one of whom shall represent recreation and tourism interests.

5. Two members who have an interest in and knowledge of the cultural resources within the Kickapoo River watershed.

(c) *Vacancies.* If any member ceases to retain the status required for his or her appointment under par. (b), the member vacates his or her office.

(d) *Recommendations for membership.* 1. The governor shall appoint the members specified in par. (b) 1. from a list of individuals recommended by the governing bodies of the municipalities and school boards of the school districts specified in par. (b) 1.

2. The governor shall appoint the members specified in par. (b) 2. from a list of individuals recommended by the governing bodies of each town, village and city which includes territory located within the area specified in par. (b) 2.

2m. The governor shall appoint the members specified in par. (b) 5. from a list of individuals recommended by the Ho−Chunk Nation.

3. Each municipality or school district specified in this paragraph may recommend no more than 3 members. The Ho−Chunk Nation may recommend no more than 6 individuals for the membership positions under par. (b) 5. At the request of the governor, a municipality, a school district, or the Ho−Chunk Nation shall recommend additional members if an individual who is recommended declines to serve.

(e) *Liaison representatives.* The secretary of agriculture, trade and consumer protection, the secretary of natural resources, the secretary of transportation, the secretary of administration, the director of the state historical society and the chancellor of the University of Wisconsin−Extension, or their designees, shall serve as liaison representatives to the board. The board may request any federally recognized American Indian tribe or band in this state, other than the Ho−Chunk Nation, that expresses an interest in the governance of the Kickapoo valley reserve to appoint a liaison representative to the board. The liaison representatives are not board members and have no voting power.

(3) LOWER WISCONSIN STATE RIVERWAY BOARD. (a) There is created a lower Wisconsin state riverway board, which is attached to the department of tourism under s. 15.03.

(b) The board shall be composed of the following members appointed for 3−year terms:

1. One member from Crawford County.

2. One member from Dane County.

3. One member from Grant County.

4. One member from Iowa County.

5. One member from Richland County.

6. One member from Sauk County.

7. Three other members who represent recreational user groups and who are not residents of any of the counties listed in subds. 1. to 6.

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(c) The governor shall appoint each member under par. (b) 1. to 6. from a list, of at least 2 nominees, submitted by each respective county board.

(d) Each member under par. (b) 1. to 6. shall be either of the following:

1. An elected official at the time of appointment of a city or village that abuts the lower Wisconsin state riverway, as defined in s. 30.40 (15), or of a town or a county that is located at least in part in the lower Wisconsin state riverway, as defined in s. 30.40 (15).

2. A resident at the time of appointment of a city or village that abuts the lower Wisconsin state riverway, as defined in s. 30.40 (15), or of a town that is located at least in part in the lower Wisconsin state riverway, as defined in s. 30.40 (15).

(4) STATE FAIR PARK BOARD. (a) There is created a state fair park board attached to the department of tourism under s. 15.03, consisting of the following members:

1. Two representatives to the assembly, one recommended by the speaker of the assembly and one recommended by the minority leader of the assembly.

2. Two senators, one recommended by the majority leader of the senate and one recommended by the minority leader of the senate.

3. Five members representing business, 3 of whom have general business experience, one of whom has experience in agriculture and one of whom has experience with technology.

4. One resident of the city of West Allis.

5. One other member who is a resident of this state.

6. The secretary of agriculture, trade and consumer protection and the secretary of tourism or their designees.

(am) A secretary may designate a person under par. (a) 6. only if the person is an employee of the department of which the secretary is head.

(b) The members of the state fair park board under par. (a) 3. to 5. shall be appointed for 5−year terms.

History: 1995 a. 27 ss. 104, 114, 166m, 192, 193, 218e, 9116 (5); 1995 a. 216, 225; 1997 a. 36, 194; 1999 a. 197; 2003 a. 27; 2005 a. 396; 2009 a. 69; 2011 a. 32.

15.447 Same; councils. (1) COUNCIL ON TOURISM. There is created in the department of tourism a council on tourism consisting of 14 members serving 3−year terms, and the secretary of tourism or the secretary's designee, one member of the majority party in each house and one member of the minority party in each house appointed as are members of standing committees in their respective houses, the executive secretary of the arts board and the director of the historical society. Nominations for appointments to the council of members, other than ex officio members, shall be sought from but not limited to multicounty regional associations engaged in promoting tourism, statewide associations of businesses related to tourism, area visitor and convention bureaus, arts organizations, chambers of commerce, the Great Lakes intertribal council and other agencies or organizations with knowledge of American Indian tourism activities, and persons engaged in the lodging, restaurant, campground, amusement establishment, recreation establishment or retail liquor or fermented malt beverages business. Nominations shall be sought from throughout this state, to ensure that council members live in different geographical areas of the state and that they reflect the tourism industry's diversity and its distribution throughout both urban and rural areas of the state. Each council member, other than ex officio members, shall have experience in marketing and promotion strategy.

History: 1995 a. 27, ss. 128, 193; 1997 a. 36.

15.46 Department of transportation; creation. There is created a department of transportation under the direction and supervision of the secretary of transportation.

The department of transportation is entitled to sovereign immunity. It is not an independent going concern. Canadian National Railroad v. State, 2007 WI App 179, 304 Wis. 2d 218, 736 N.W.2d 900, 06−2617.

15.465 Same; attached board. (2) RUSTIC ROADS BOARD. There is created a rustic roads board in the department of transportation. The rustic roads board shall consist of the following members: the chairpersons of the senate and assembly standing committees having jurisdiction over transportation matters as determined by the speaker of the assembly and the president of the senate and 8 members appointed by the secretary of transportation for staggered 4−year terms of whom at least 4 members shall be selected from a list of nominees submitted by the Wisconsin Counties Association.

History: 1973 c. 142; 1977 c. 29; 1979 c. 34; 1981 c. 347; 1983 a. 192 s. 303 (7); 1993 a. 16.

15.467 Same; councils. (3) COUNCIL ON HIGHWAY SAFETY. There is created in the department of transportation a council on highway safety. The council shall consist of 15 members, as follows:

(a) Five citizen members appointed for staggered 3−year terms.

(b) Five state officers, part of whose duties shall be related to transportation and highway safety, appointed for staggered 3−year terms.

(c) Three representatives to the assembly, appointed as are the members of assembly standing committees, at least one of whom serves on any assembly standing committee dealing with transportation matters.

(d) Two senators, appointed as are the members of senate standing committees, at least one of whom serves on any senate standing committee dealing with transportation matters.

(4) COUNCIL ON UNIFORMITY OF TRAFFIC CITATIONS AND COMPLAINTS. There is created in the department of transportation a council on uniformity of traffic citations and complaints. Notwithstanding s. 15.09 (6), members of the council shall not be reimbursed for expenses incurred in the performance of their duties on the council. The council shall consist of the following members:

(a) The secretary, or his or her designee, as chairperson.

(b) A member of the department of transportation responsible for law enforcement.

(c) A member of the Wisconsin Sheriffs and Deputy Sheriffs Association, designated by the president thereof.

(d) A member of the County Traffic Patrol Association, designated by the president thereof.

(e) A member of the Chiefs of Police Association, designated by the president thereof.

(f) A member of the State Bar of Wisconsin, designated by the president thereof.

(g) A member of the Wisconsin council of safety, designated by the president thereof.

(h) A member of the Wisconsin District Attorneys Association, designated by the president thereof.

(i) A member of the judicial conference, designated by the chairperson of the conference.

(j) A member designated by the director of state courts.

History: 1977 c. 325; 1979 c. 34 s. 16; 1979 c. 361 s. 112; 1985 a. 145 ss. 1, 4; 1987 a. 27; 1991 a. 316; 1997 a. 27; 2001 a. 103; 2011 a. 245.

15.49 Department of veterans affairs; creation. (1) In this section, "veteran" means a veteran, as defined in s. 45.01 (12) (a) to (f), who has served on active duty, as defined in s. 45.01 (1).

(2) There is created a department of veterans affairs and a board of veterans affairs. Except as otherwise provided by law, the department shall be under the direction and supervision of the secretary of veterans affairs, who shall be a veteran. The board shall consist of 9 members all of whom shall be veterans. The members shall be appointed for staggered 4−year terms. The board shall be composed so that for each congressional district in the state there is at least one member of the board who is a resident of that district. If a member ceases to reside within the boundaries

of the congressional district where he or she resided as that district existed at the time that member's current term began, the member vacates his or her office.

History: 1975 c. 77; 1981 c. 199; 1991 a. 165; 2011 a. 36.

15.497 Same; councils. (2) COUNCIL ON VETERANS PROGRAMS. There is created in the department of veterans affairs a council on veterans programs consisting of all of the following representatives appointed for one−year terms by the organization that each member represents:

(a) One representative each of the state departments of the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, the Marine Corps League, the Navy Club of the U.S.A., the Veterans of World War II (AMVETS), the American Ex−prisoners of War, the Vietnam Veterans Against the War, Inc., the Vietnam Veterans of America, Inc., the Catholic War Veterans of the U.S.A., the Jewish War Veterans of the U.S.A., the Polish Legion of American Veterans, the National Association for Black Veterans, Inc., the Army and Navy Union of the United States of America, the Wisconsin Association of Concerned Veteran Organizations, the United Women Veterans, Inc., the U.S. Submarine Veterans of World War II, the Wisconsin Vietnam Veterans, Inc., and the Military Order of the Purple Heart.

(b) One representative of the American Red Cross.

(c) One representative of the Wisconsin county veterans service officers.

(d) One representative of the Wisconsin chapter of the Paralyzed Veterans of America.

(e) One representative of the Wisconsin Council of the Military Officers Association of America.

(f) One representative of The Retired Enlisted Association.

(g) One representative of the Wisconsin American GI Forum.

(h) One representative of the Blinded Veterans Association of Wisconsin.

History: 1973 c. 90, 333; 1975 c. 316; 1981 c. 237; 1983 a. 437; 1987 a. 243; 1987 a. 403 s. 255; 1989 a. 31, 36, 359; 1995 a. 120; 2001 a. 21; 2005 a. 22; 2007 a. 25; 2009 a. 49, 298.

SUBCHAPTER III

INDEPENDENT AGENCIES

15.57 Educational communications board; creation. There is created an educational communications board consisting of:

(1) The secretary of administration, the state superintendent of public instruction, the president of the University of Wisconsin System and the director of the technical college system board, or their designees.

(2) Two public members appointed for 4−year terms.

(3) One representative of public schools and one representative of private schools or of tribal schools, as defined in s. 115.001 (15m), appointed for 4−year terms.

(4) One majority and one minority party senator and one majority and one minority party representative to the assembly, appointed as are the members of standing committees in their respective houses.

(5) One member appointed by the board of regents of the University of Wisconsin System for a 4−year term.

(6g) The president of the Wisconsin Public Radio Association.

(6m) One member with a demonstrated interest in public television who resides within the coverage area of an education television channel subject to s. 39.11 (3).

(7) One member appointed by the technical college system board for a 4−year term.

History: 1971 c. 100 s. 4; Stats. 1971 s. 15.57; 1977 c. 325; 1983 a. 27; 1985 a. 29; 1991 a. 39; 1993 a. 399; 1995 a. 27; 1997 a. 27; 2009 a. 302.

15.58 Employment relations commission; creation. There is created an employment relations commission.

15.60 Government accountability board; creation. (1) There is created a government accountability board consisting of 6 persons. Members shall serve for 6−year terms.

(2) All members of the board shall be appointed from nominations submitted to the governor by a nominating committee to be called the governmental accountability candidate committee, which shall consist of one court of appeals judge from each of the court of appeals districts. The members of the committee shall serve for 2−year terms expiring on March 1. The court of appeals judges shall be chosen as members by lot by the chief justice of the supreme court in the presence of the other justices of the supreme court. Service on the committee is mandatory except as provided in s. 758.19 (9).

(3) Each member of the board shall be an individual who formerly served as a judge of a court of record in this state and who was elected to the position in which he or she served.

(4) No member may hold another office or position that is a state public office or a local public office, as defined in s. 19.42, except the office of circuit judge or court of appeals judge under s. 753.075.

(5) No member, for one year immediately prior to the date of nomination may have been, or while serving on the board may become, a member of a political party, an officer or member of a committee in any partisan political club or organization, or an officer or employee of a registrant under s. 11.05.

(6) No member, while serving on the board, may become a candidate, as defined in s. 11.01 (1), for state office or local office, as defined in s. 5.02.

(7) No member, while serving on the board, may make a contribution, as defined in s. 11.01 (6), to a candidate, as defined in s. 11.01 (1) for state office or local office, as defined in s. 5.02. No individual who serves as a member of the board, for 12 months prior to beginning that service, may have made a contribution, as defined in s. 11.01 (6), to a candidate for a partisan state or local office, as defined in s. 5.02.

(8) No member may be a lobbyist, as defined in s. 13.62 (11), or an employee of a principal, as defined in s. 13.62 (12), except that a member may serve as a circuit judge or court of appeals judge under s. 753.075.

History: 2007 a. 1.

Membership on the board is an office of public trust but is not a judicial office within the meaning of Art. VII, s. 1. In conformity with Art. VII, s. 1, an individual who has resigned from the office of judge may not serve as a member of the board for the duration of the term to which the individual was elected to serve as a judge. OAG 4−08.

15.603 Same; specified divisions. (1) ETHICS AND ACCOUNTABILITY DIVISION. There is created in the government accountability board an ethics and accountability division. The ethics and accountability division shall be under the direction and supervision of an administrator, who shall be appointed by the board.

(2) ELECTIONS DIVISION. There is created in the government accountability board an elections division. The elections division shall be under the direction and supervision of an administrator, who shall be appointed by the board.

History: 2007 a. 1.

15.607 Same; council. (1) ELECTION ADMINISTRATION COUNCIL. There is created in the government accountability board an election administration council consisting of members appointed by the administrator of the elections division of the government accountability board, including the clerk or executive director of the board of election commissioners of the 2 counties or municipalities in this state having the largest population, one or more election officials of other counties or municipalities, representatives of organizations that advocate for the interests of indi-

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viduals with disabilities and organizations that advocate for the interests of the voting public, and other electors of this state.

History: 2007 a. 1 s. 80; Stats. 2007 s. 15.607.

15.67 Higher educational aids board; creation. (1) There is created a higher educational aids board consisting of the state superintendent of public instruction and the following members appointed for 3−year terms, except that the members specified under pars. (a) 5. and 6. and (b) 3. shall be appointed for 2−year terms:

(a) To represent public institutions of higher education, all of the following:

1. One member of the board of regents of the University of Wisconsin System.

2. One member of the technical college system board.

3. One financial aids administrator within the University of Wisconsin System.

4. One financial aids administrator within the technical college system.

5. One undergraduate student enrolled at least half−time and in good academic standing at an institution within the University of Wisconsin System who is at least 18 years old and a resident of this state.

6. One student enrolled at least half−time and in good academic standing at a technical college who is at least 18 years old and a resident of this state.

(b) To represent private, nonprofit institutions of higher education, all of the following:

1. One member of a board of trustees of an independent college or university in this state.

2. One financial aids administrator of a private nonprofit institution of higher education located in this state.

3. One undergraduate student enrolled at least half−time and in good academic standing at a private, nonprofit institution of higher education located in this state who is at least 18 years old and a resident of this state.

(c) One member to represent the general public.

(2) If a student member under sub. (1) loses the status upon which the appointment was based, he or she shall cease to be a member of the higher educational aids board upon appointment to the higher educational aids board of a qualified successor.

History: 1997 a. 27, 237.

15.70 Historical society. There is continued the state historical society of Wisconsin initially organized under chapter 17, laws of 1853, to be known for statutory purposes as the historical society, under the direction and supervision of a board of curators. The board of curators is not subject to s. 15.07. The board of curators shall consist of:

(1) The governor, or his or her designee.

(2) The speaker of the assembly or his or her designee chosen from the representatives to the assembly.

(3) The president of the senate or his or her designee chosen from the members of the senate.

(4) Three members nominated by the governor and with the advice and consent of the senate appointed for staggered 3−year terms.

(5) Members selected as provided in the constitution and bylaws of the historical society. After July 1, 1986, the number of members on the board of curators selected under this subsection may not exceed 30.

(6) One member of the senate from the minority party in the senate and one representative to the assembly from the minority party in the assembly, appointed as are members of standing committees in their respective houses.

History: 1983 a. 27.

15.705 Same; attached boards. (1) BURIAL SITES PRESERVATION BOARD. There is created a burial sites preservation board attached to the historical society under s. 15.03, consisting of the state archaeologist, as a nonvoting member, the director of the historical society if the director is not serving as the state historic preservation officer, the state historic preservation officer, or her or his formally appointed designee, who shall be a nonvoting member unless the director of the historical society is serving as the state historic preservation officer, and the following members appointed for 3−year terms:

(a) Three members, selected from a list of names submitted by the Wisconsin archaeological survey, who shall have professional qualifications in the fields of archaeology, physical anthropology, history or a related field.

(b) Three members who shall be members of federally recognized Indian tribes or bands in this state, selected from names submitted by the Great Lakes inter−tribal council and the Menominee tribe. Each such member shall be knowledgeable in the field of tribal preservation planning, history, archaeology or a related field or shall be an elder, traditional person or spiritual leader of his or her tribe.

(2) HISTORIC PRESERVATION REVIEW BOARD. There is created a historic preservation review board attached to the historical society under s. 15.03, consisting of 15 members appointed for staggered 3−year terms. At least 9 members shall be persons with professional qualifications in the fields of architecture, archaeology, art history and history and up to 6 members may be persons qualified in related fields including, but not limited to, landscape architecture, urban and regional planning, law or real estate.

History: 1977 c. 29; 1979 c. 110; 1981 c. 237; 1985 a. 316; 1995 a. 27; 1995 a. 216 ss. 2j, 2k.

15.707 Same; councils. (3) HISTORICAL SOCIETY ENDOWMENT FUND COUNCIL. There is created in the historical society a historical society endowment fund council consisting of 10 members, including at least one representative of each of the following:

(a) The historical society.

(b) The Wisconsin Humanities Council.

(c) The Wisconsin Academy of Science, Arts and Letters.

(d) The arts board.

(e) Wisconsin public radio.

(f) Wisconsin public television.

History: 1977 c. 29 s. 1654 (8) (h); 1977 c. 273; 1979 c. 361 s. 112; 1991 a. 39, 269; 1995 a. 27; 1997 a. 27.

15.73 Office of commissioner of insurance; creation. There is created an office of the commissioner of insurance under the direction and supervision of the commissioner of insurance. The commissioner shall not:

(1) Be a candidate for public office in any election;

(2) Directly or indirectly solicit or receive, or be in any manner concerned with soliciting or receiving any assessment, subscription, contribution or service, whether voluntary or involuntary, for any political purpose whatever, from any person within or without the state; nor

(3) Act as an officer or manager for any candidate, political party or committee organized to promote the candidacy of any person for any public office.

15.76 Investment board; creation. There is created a state of Wisconsin investment board, to be known for statutory purposes as the investment board. The investment board shall consist of the following members:

(1) The secretary of administration, or the secretary's designee.

(1r) One member appointed for a 6−year term, who is a representative of a local government that participates in the local government pooled−investment fund under s. 25.50. The member shall be employed by the local government in a finance position and have had at least 10 years of financial experience, but may not be an elected official, an employee of a county with a population greater than 450,000 or an employee of a city, town or village with

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a population greater than 150,000. If the member appointed under this subsection loses the status upon which the appointment was based, he or she shall cease to be a member of the investment board.

(2) Five members appointed for staggered 6−year terms, 4 of whom shall have had at least 10 years' experience in making investments, but any person having a financial interest in or whose employer is primarily a dealer or broker in securities or mortgage or real estate investments is not eligible for appointment, and any member who acquires such an interest or accepts such appointment shall thereupon vacate his or her membership.

(3) Two participants in the Wisconsin retirement system appointed for 6−year terms, one of whom shall be a teacher participant appointed by the teacher retirement board and one of whom shall be a participant other than a teacher appointed by the Wisconsin retirement board.

History: 1981 c. 96; 1985 a. 29; 1991 a. 316; 1995 a. 274.

15.78 Public defender board. There is created a public defender board consisting of 9 members appointed for staggered 3−year terms. No member may be, or be employed on the staff of, a judicial or law enforcement officer, district attorney, corporation counsel, or the state public defender. At least 5 members shall be members of the State Bar of Wisconsin.

History: 1977 c. 29; 2001 a. 103.

15.79 Public service commission; creation. (1) There is created a public service commission. No member of the commission may have a financial interest in a railroad, water carrier, or public utility. If any member voluntarily becomes so interested, the member's office shall become vacant. If the member involuntarily becomes so interested, the member's office shall become vacant unless the member divests himself or herself of the interest within a reasonable time. Each commissioner shall hold office until a successor is appointed and qualified.

(2) A commissioner of the public service commission may not do any of the following:

(a) Be a candidate for public office in any election.

(b) Directly or indirectly solicit or receive any contribution, as defined in s. 11.01 (6), for any political purpose, as defined in s. 11.01 (16), from any person within or outside of the state.

(c) Act as an officer or manager for any candidate, political party, or committee organized to promote the candidacy of any person for any public office.

(d) Serve on or under any committee of a political party.

History: 1979 c. 171; 2005 a. 179; 2011 a. 155.

A public service commissioner may attend a political party convention as a delegate. 61 Atty. Gen. 265.

15.795 Same; attached office. (1) OFFICE OF THE COMMISSIONER OF RAILROADS. There is created an office of the commissioner of railroads which is attached to the public service commission under s. 15.03, provided that s. 85.02 (1) does not apply to the office of the commissioner of railroads. The commissioner of railroads shall have expertise in railroad issues and may not have a financial interest in a railroad, as defined in s. 195.02 (1), or a water carrier, as defined in s. 195.02 (5). The commissioner may not serve on or under any committee of a political party. The commissioner shall hold office until a successor is appointed and qualified.

History: 1993 a. 123; 2003 a. 89; 2005 a. 179.

15.797 Same; council. (1) WIND SITING COUNCIL. (a) In this subsection, "wind energy system" has the meaning given in s. 66.0403 (1) (m).

(b) There is created in the public service commission a wind siting council that consists of the following members appointed by the public service commission for 3−year terms:

1. Two members representing wind energy system developers.

2. One member representing towns and one member representing counties.

3. Two members representing the energy industry.

4. Two members representing environmental groups.

5. Two members representing realtors.

6. Two members who are landowners living adjacent to or in the vicinity of a wind energy system and who have not received compensation by or on behalf of owners, operators, or developers of wind energy systems.

7. Two public members.

8. One member who is a University of Wisconsin System faculty member with expertise regarding the health impacts of wind energy systems.

History: 2009 a. 40.

15.91 Board of regents of the University of Wisconsin System; creation. There is created a board of regents of the University of Wisconsin System consisting of the state superintendent of public instruction, the president, or by his or her designation another member, of the technical college system board and 14 citizen members appointed for staggered 7−year terms, and 2 students enrolled at least half−time and in good academic standing at institutions within the University of Wisconsin System who are residents of this state, for 2−year terms. At least one of the citizen members shall reside in each of this state's congressional districts. The student members may be selected from recommendations made by elected representatives of student governments at institutions within the University of Wisconsin System. The governor shall appoint one student member who is at least 18 years old and one undergraduate student member who is at least 24 years old and represents the views of nontraditional students, such as those who are employed or are parents. The governor may not appoint a student member from the same institution in any 2 consecutive terms; the 2 student members who are appointed may not be from the same institution; and a student from the University of Wisconsin−Madison and a student from the University of Wisconsin−Milwaukee may not serve on the Board of Regents at the same time. If a student member loses the status upon which the appointment was based, he or she shall cease to be a member of the board of regents.

History: 1971 c. 100; 1977 c. 29; 1985 a. 85; 1991 a. 68; 1993 a. 399; 1995 a. 27, 78; 1997 a. 237; 2005 a. 76; 2011 a. 89.

15.915 Same; attached boards and commissions. (1) VETERINARY DIAGNOSTIC LABORATORY BOARD. (a) There is created a veterinary diagnostic laboratory board attached to the University of Wisconsin System under s. 15.03.

(b) The veterinary diagnostic laboratory board shall consist of the following members:

1. The secretary of agriculture, trade and consumer protection or his or her designee.

2. The chancellor of the University of Wisconsin−Madison or his or her designee.

3. The dean of the school of veterinary medicine or his or her designee.

4. A veterinarian employed by the federal government, to serve at the pleasure of the governor.

5. Five other members representing persons served by the veterinary diagnostic laboratory, at least one of whom is a livestock producer, at least one of whom represents the animal agriculture industry and at least one of whom is a practicing veterinarian who is a member of the Wisconsin Veterinary Medical Association, appointed for 3−year terms.

6. The director of the veterinary diagnostic laboratory, who shall serve as a nonvoting member.

(2) LABORATORY OF HYGIENE BOARD. There is created in the University of Wisconsin System a laboratory of hygiene under the direction and supervision of the laboratory of hygiene board. The board shall consist of:

(a) The chancellor of the University of Wisconsin−Madison, the secretary of health services, the secretary of natural resources and the secretary of agriculture, trade and consumer protection, or their designees.

(b) A representative of local health departments who is not an employee of the department of health services, one physician representing clinical laboratories, one member representing private environmental testing laboratories, one member representing occupational health laboratories and 3 additional members, one of whom shall be a medical examiner or coroner, appointed for 3−year terms. No member appointed under this paragraph may be an employee of the laboratory of hygiene.

(c) The director of the laboratory, who shall serve as a nonvoting member.

(6) ENVIRONMENTAL EDUCATION BOARD. (a) *Creation.* There is created an environmental education board attached to the University of Wisconsin System under s. 15.03.

(b) *Members.* The environmental education board shall consist of the following members:

1. The state superintendent of public instruction.

2. The secretary of natural resources.

3. The president of the University of Wisconsin System.

4. The director of the technical college system.

5. One majority and one minority party senator and one majority and one minority party representative to the assembly, appointed as are the members of standing committees in their respective houses.

6. One member, appointed for a 3−year term by the president of the University of Wisconsin System, to represent each of the following:

a. Elementary and secondary school environmental educators.

b. Conservation and environmental organizations.

c. Business and industry.

d. Agriculture.

e. Labor.

f. Faculty of public and private institutions of higher education.

g. Nature centers, zoos, museums and other nonformal environmental educational organizations.

h. Forestry.

i. Energy industry.

(c) *Designees.* Members of the board under par. (b) 1. to 4. may appoint designees to serve on the board, if the designee is an employee or appointive officer of the agency who has sufficient authority to deploy agency resources and directly influence agency decision making.

History: 1971 c. 323; 1973 c. 335; 1975 c. 39; 1977 c. 29 s. 1650m (2); 1977 c. 203, 418; 1979 c. 34 s. 50m; 1981 c. 346; 1985 a. 29; 1989 a. 20; 1989 a. 31 ss. 60m, 95e; 1991 a. 25; 1993 a. 27; 1995 a. 27 ss. 112b, 112c, 112d, 112h, 9126 (19); 1995 a. 227; 1997 a. 27 ss. 75m, 94e to 94m; 1997 a. 237 s. 722p; 1999 a. 107; 2001 a. 16; 2005 a. 404; 2007 a. 20 s. 9121 (6) (a).

15.917 Same; attached council. (1) RURAL HEALTH DEVELOPMENT COUNCIL. There is created in the University of Wisconsin System a rural health development council consisting of 17 members nominated by the governor, and with the advice and consent of the senate appointed, for 5−year terms, and the secretary of health services, or his or her designee. The appointed members shall include all of the following:

(a) A representative of the University of Wisconsin Medical School.

(b) A representative of the Medical College of Wisconsin, Inc.

(c) A representative of the Wisconsin Health and Educational Facilities Authority.

(d) One representative of a private lender that makes loans in rural areas.

(e) A representative of a hospital located in a rural area and a representative of a clinic located in a rural area.

(f) A physician licensed under ch. 448, a dentist licensed under ch. 447, a nurse licensed under ch. 441, and a dental hygienist licensed under ch. 447, all of whom practice in a rural area, and a representative of public health services.

(g) The secretary of agriculture, trade and consumer protection or the secretary's designee.

(h) The secretary of workforce development or the secretary's designee.

(i) A representative of an economic development organization operating in a rural area.

(j) A member of the public from a rural area.

History: 2009 a. 28 ss. 40g to 40n, 43 to 43g; 2011 a. 32.

15.94 Technical college system board; creation. There is created a technical college system board consisting of 13 members. No person may serve as president of the board for more than 2 successive annual terms. The board shall be composed of:

(1m) The state superintendent of public instruction or the superintendent's designee.

(2) The secretary of workforce development or the secretary's designee.

(2m) The president, or by his or her designation another member, of the board of regents of the University of Wisconsin System.

(3) One employer of labor, one employee who does not have employing or discharging power, one person whose principal occupation is farming and who is actually engaged in the operation of farms and 6 additional members appointed for 6−year terms.

(4) One student enrolled at least half−time and in good academic standing at a technical college who is at least 18 years old and a resident of this state, for a 2−year term. The governor may not appoint a student member from the same technical college in any 2 consecutive terms. If the student member loses the status upon which the appointment was based, other than through graduation, he or she shall cease to be a member of the board.

History: 1971 c. 100; 1977 c. 29; 1979 c. 32; 1981 c. 269; 1985 a. 29; 1991 a. 29, 68; 1993 a. 399; 1995 a. 27 ss. 222, 9130 (4); 1995 a. 78; 1997 a. 3, 161.

A member of a vocational, technical and adult education (technical college district board) local district board cannot serve as a state board member. 60 Atty. Gen. 178.

15.945 Same; attached board. (1) EDUCATIONAL APPROVAL BOARD. There is created an educational approval board which is attached to the technical college system board under s. 15.03. The board shall consist of not more than 7 members, who shall be representatives of state agencies and other persons with a demonstrated interest in educational programs, appointed to serve at the pleasure of the governor.

History: 1997 a. 27; 1999 a. 9 s. 40g; Stats. 1999 s. 15.495; 2005 a. 25 s. 56; Stats. 2005 s. 15.945.

CHAPTER 440

DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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Cross−reference: See also SPS, Wis. adm. code.

SUBCHAPTER I

GENERAL PROVISIONS

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

(ad) "Automated external defibrillator" means a defibrillator device to which all of the following apply:

1. It is approved for commercial distribution by the federal food and drug administration.

2. It is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and of determining without intervention by the user of the device whether defibrillation should be performed.

3. After having determined that defibrillation should be performed, it is capable, either at the command of an operator or without intervention by an operator, of delivering an electrical shock to an individual.

(ag) "Defibrillation" means administering an electrical impulse to an individual's heart in order to stop ventricular fibrillation or rapid ventricular tachycardia.

(aj) "Department" means the department of safety and professional services.

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

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

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

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

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

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

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

(g) "Secretary" means the secretary of safety and professional services.

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

(i) "Ventricular fibrillation" means a disturbance in the normal rhythm of the heart that is characterized by rapid, irregular, and ineffective twitching of the ventricles of the heart.

(2) In this subchapter:

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

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

(bm) "Credentialing board" means an examining board or an affiliated credentialing board in the department.

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

(cs) "Minority group member" has the meaning given in s. 16.287 (1) (f).

(cv) "Psychotherapy" has the meaning given in s. 457.01 (8m).

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

History: 1977 c. 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102, 107; 1995 a. 233, 333; 1997 a. 35 s. 448; 1997 a. 237 ss. 532, 539m; 1999 a. 9 s. 2915; 2001 a. 80; 2007 a. 104, 143; 2011 a. 32.

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 appraisers board, and all examining boards and affiliated credentialing boards attached to the department or an examining board, for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

(1m) The department may promulgate rules specifying the number of business days within which the department or any examining board or affiliated credentialing board in the department must review and make a determination on an application for a permit, as defined in s. 227.116 (1g), that is issued under chs. 440 to 480.

(2) The department may provide examination development services, consultation and technical assistance to other state agencies, federal agencies, counties, cities, villages, towns, national or regional organizations of state credentialing agencies, similar credentialing agencies in other states, national or regional accrediting associations, and nonprofit organizations. The department may charge a fee sufficient to reimburse the department for the costs of providing such services. In this subsection, "nonprofit organization" means a nonprofit corporation as defined in s. 181.0103 (17), and an organization exempt from tax under 26 USC 501.

(3) If the secretary reorganizes the department, no modification may be made in the powers and responsibilities of the examining boards or affiliated credentialing boards attached to the department or an examining board under s. 15.405 or 15.406.

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

(3q) Notwithstanding sub. (3m), the department of safety and professional services shall investigate any report that it receives under s. 146.40 (4r) (em).

(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.

(5m) The department shall maintain a toll−free telephone number to receive reports of allegations of unprofessional con-

duct, negligence or misconduct involving a physician licensed under subch. II of ch. 448. The department shall publicize the toll−free telephone number and the investigative powers and duties of the department and the medical examining board as widely as possible in the state, including in hospitals, clinics, medical offices and other health care facilities.

(6) The department shall have access to any information contained in the reports filed with the medical examining board, an affiliated credentialing board attached to the medical examining board and the board of nursing under s. 655.045, as created by 1985 Wisconsin Act 29, and s. 655.26.

(7) The department shall establish the style, content and format of all credentials and of all forms for applying for any credential issued or renewed under chs. 440 to 480.All forms shall include a place for the information required under sub. (11m) (a). Upon request of any person who holds a credential and payment of a $10 fee, the department may issue a wall certificate signed by the governor.

(7m) The department may promulgate rules that establish procedures for submitting an application for a credential or credential renewal by electronic transmission. Any rules promulgated under this subsection shall specify procedures for complying with any requirement that a fee be submitted with the application. The rules may also waive any requirement in chs. 440 to 480 that an application submitted to the department, an examining board or an affiliated credentialing board be executed, verified, signed, sworn or made under oath, notwithstanding ss. 440.26 (2) (b), 440.42 (2) (intro.), 440.91 (2) (intro.), 443.06 (1) (a), 443.10 (2) (a), 445.04 (2), 445.08 (4), 445.095 (1) (a), 448.05 (7), 450.09 (1) (a), 452.10 (1) and 480.08 (2m).

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

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

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

(9) (a) Subject to pars. (b) and (c), the department shall, biennially, determine each fee for an initial credential for which no examination is required, for a reciprocal credential, and for a credential renewal by doing all of the following:

1. Recalculating the administrative and enforcement costs of the department that are attributable to the regulation of each occupation or business under chs. 440 to 480.

2. Not later than January 31 of each odd−numbered year, adjusting for the succeeding fiscal biennium each fee for an initial credential for which an examination is not required, for a reciprocal credential, and, subject to s. 440.08 (2) (a), for a credential renewal, if an adjustment is necessary to reflect the approximate administrative and enforcement costs of the department that are attributable to the regulation of the particular occupation or business during the period in which the initial or reciprocal credential or credential renewal is in effect and, for purposes of each fee for a credential renewal, to reflect an estimate of any additional moneys available for the department's general program operations as a result of appropriation transfers that have been or are estimated to be made under s. 20.165 (1) (i) during the fiscal biennium in progress at the time of the deadline for an adjustment under this subdivision or during the fiscal biennium beginning on the July 1 immediately following the deadline for an adjustment under this subdivision.

(b) The department may not recommend an initial credential fee that exceeds the amount of the fee that the department recommends for a renewal of the same credential, if no examination is required for the initial credential.

(c) The cemetery board may by rule impose a fee in addition to the renewal fee determined by the department under this subsection for renewal of a license granted under s. 440.91 (1).

(d) Not later than 14 days after completing proposed fee adjustments under par. (a), the department shall send a report detailing the proposed fee adjustments to the cochairpersons of the joint committee on finance. If, within 14 working days after the date that the department submits the report, the cochairpersons of the committee notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposed adjustments, the department may not impose the fee adjustments until the committee approves the report. If the cochairpersons of the committee do not notify the secretary, the department shall notify credential holders of the fee adjustments by posting the fee adjustments on the department's Internet Web site and in credential renewal notices sent to affected credential holders under s. 440.08 (1).

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

(11m) (a) Each application form for a credential issued or renewed under chs. 440 to 480 shall provide a space for the department to require each of the following, other than an individual who does not have a social security number and who submits a statement made or subscribed under oath or affirmation as required under par. (am), to provide his or her social security number:

1. An applicant for an initial credential or credential renewal. If the applicant is not an individual, the department shall require the applicant to provide its federal employer identification number.

2. An applicant for reinstatement of an inactive license under s. 452.12 (6) (e).

(am) If an applicant specified in par. (a) 1. or 2. is an individual who does not have a social security number, the applicant shall submit a statement made or subscribed under oath that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. A credential or license issued in reliance upon a false statement submitted under this paragraph is invalid.

(b) The real estate examining board shall deny an application for an initial credential or deny an application for credential renewal or for reinstatement of an inactive license under s. 452.12 (6) (e) if any information required under par. (a) is not included in the application form or, in the case of an applicant who is an individual and who does not have a social security number, if the statement required under par. (am) is not included with the application form.

(c) The department of safety and professional services may not disclose a social security number obtained under par. (a) to any person except the coordinated licensure information system under s. 441.50 (7); the department of children and families for purposes of administering s. 49.22; and, for a social security number obtained under par. (a) 1., the department of revenue for the purpose of requesting certifications under s. 73.0301 and administering state taxes.

(12m) The department of safety and professional services shall cooperate with the departments of justice, children and families, and health services in developing and maintaining a computer linkup to provide access to information regarding the current status of a credential issued to any person by the department of safety and professional services, including whether that credential has been restricted in any way.

(13) (a) The department may conduct an investigation to determine whether an applicant for a credential issued under chs. 440 to 480 satisfies any of the eligibility requirements specified for the credential, including whether the applicant does not have an arrest or conviction record. In conducting an investigation

under this paragraph, the department may require an applicant to provide any information that is necessary for the investigation, except that, for an investigation of an arrest or conviction record, the department shall comply with the requirements of pars. (b) and (c).

(am) A person holding a credential under chs. 440 to 480 who is convicted of a felony or misdemeanor anywhere shall send a notice of the conviction by 1st class mail to the department within 48 hours after the entry of the judgment of conviction. The department shall by rule determine what information and documentation the person holding the credential shall include with the written notice.

(b) The department may investigate whether an applicant for or holder of any of the following credentials has been charged with or convicted of a crime only pursuant to rules promulgated by the department under this paragraph, including rules that establish the criteria that the department will use to determine whether an investigation under this paragraph is necessary, except as provided in par. (c):

1. Accountant, certified public.
2. Acupuncturist.
3. Advanced practice nurse prescriber.
4. Aesthetician.
5. Aesthetics instructor.

5m. Substance abuse counselor, clinical supervisor, or prevention specialist.

5r. Anesthesiologist assistant.

NOTE: Subd. 5r. is created eff. 11−1−12 by 2011 Wis. Act 160.

6. Appraiser, real estate, certified general.
7. Appraiser, real estate, certified residential.
8. Appraiser, real estate, licensed.
9. Architect.
10. Athletic trainer.
11. Auctioneer.
12. Audiologist.
13. Barber.
14. Barbering instructor.
15. Barbering manager.

15m. Behavior analyst.

16. Boxer.
17. Cemetery preneed seller.
18. Cemetery salesperson.

18g. Chiropractic radiological technician.

18r. Chiropractic technician.

19. Chiropractor.

19e. Cosmetologist.

19m. Cosmetology instructor.

19s. Cosmetology manager.

20. Dental hygienist.
21. Dentist.
22. Designer of engineering systems.
23. Dietitian.
24. Drug distributor.
25. Drug manufacturer.
26. Electrologist.
27. Electrology instructor.
28. Engineer, professional.
29. Fund−raising counsel.
30. Funeral director.
31. Hearing instrument specialist.
32. Home inspector.

32m. Juvenile martial arts instructor.

33. Landscape architect.
34. Land surveyor.
35. Manicuring instructor.
36. Manicurist.
37. Marriage and family therapist.
38. Massage therapist or bodywork therapist.
39. Music, art, or dance therapist.
40. Nurse, licensed practical.
41. Nurse, registered.
42. Nurse−midwife.
43. Nursing home administrator.
44. Occupational therapist.
45. Occupational therapy assistant.
46. Optometrist.
47. Perfusionist.
48. Pharmacist.
49. Physical therapist.
50. Physical therapist assistant.
51. Physician.
52. Physician assistant.
53. Podiatrist.
54. Private detective.
55. Private practice school psychologist.
56. Private security person.
57. Professional counselor.

57m. Professional employer organization or professional employer group.

58. Professional fund−raiser.
59. Professional geologist.
60. Professional hydrologist.
61. Professional soil scientist.
62. Psychologist.
63. Real estate broker.
64. Real estate salesperson.
65. Registered interior designer.
66. Respiratory care practitioner.

66d. Sanitarian.

67. Social worker.
68. Social worker, advanced practice.
69. Social worker, independent.
70. Social worker, independent clinical.
71. Speech−language pathologist.
72. Time−share salesperson.
73. Veterinarian.
74. Veterinary technician.
75. Any other profession or occupation specified by law that is regulated by the department or a credentialing board.

(c) The department shall require an applicant for a private detective license or a private security permit under s. 440.26, an applicant for a juvenile martial arts instructor permit under sub. (17), and a person for whom the department conducts an investigation under par. (b), to be photographed and fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may submit the fingerprint cards to the federal bureau of investigation for the purpose of verifying the identity of the persons fingerprinted and obtaining records of their criminal arrests and convictions.

(d) The department shall charge an applicant any fees, costs, or other expenses incurred in conducting any investigation under this subsection or s. 440.26.

(14) (a) 1. The department shall grant a certificate of registration as a music therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a music therapist by the Certification Board for Music Therapists, National Music Therapy Registry, American Music Therapy

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Association or by another national organization that certifies, registers or accredits music therapists.

b. The organization that certified. registered or accredited the person under subd. 1. a. is approved by the department.

c. The person pays the initial credential fee determined by the department under s. 440.03 (9) (a) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd. 1. a.

2. The department shall grant a certificate of registration as an art therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as an art therapist by the Art Therapy Credentials Board or by another national organization that certifies, registers or accredits art therapists.

b. The organization that certified, registered or accredited the person under subd. 2. a. is approved by the department.

c. The person pays the initial credential fee determined by the department under s. 440.03 (9) (a) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd. 2. a.

3. The department shall grant a certificate of registration as a dance therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a dance therapist by the American Dance Therapy Association or by another national organization that certifies, registers or accredits dance therapists.

b. The organization that certified, registered or accredited the person under subd. 3. a. is approved by the department.

c. The person pays the initial credential fee determined by the department under s. 440.03 (9) (a) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd. 3. a.

(am) The department may promulgate rules that establish requirements for granting a license to practice psychotherapy to a person who is registered under par. (a). Rules promulgated under this paragraph shall establish requirements for obtaining such a license that are comparable to the requirements for obtaining a clinical social worker, marriage and family therapist, or professional counselor license under ch. 457. If the department promulgates rules under this paragraph, the department shall grant a license under this paragraph to a person registered under par. (a) who pays the initial credential fee determined by the department under s. 440.03 (9) (a) and provides evidence satisfactory to the department that he or she satisfies the requirements established in the rules.

(b) A person who is registered under par. (a) shall notify the department in writing within 30 days if an organization specified in par. (a) 1. a., 2. a. or 3. a. revokes the person's certification, registration, or accreditation specified in par. (a) 1. a., 2. a., or 3. a. The department shall revoke a certificate of registration granted under par. (a) if such an organization revokes such a certification, registration, or accreditation. If the department revokes the certificate of registration of a person who also holds a license granted under the rules promulgated under par. (am), the department shall also revoke the license.

(c) The renewal dates for certificates granted under par. (a) and licenses granted under par. (am) are specified in s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee determined by the department under s. 440.03 (9) (a) and evidence satisfactory to the department that the person's certification, registration, or accreditation specified in par. (a) 1. a., 2. a., or 3. a. has not been revoked.

(d) The department shall promulgate rules that specify the services within the scope of practice of music, art, or dance therapy that a person who is registered under par. (a) is qualified to perform. The rules may not allow a person registered under par. (a) to perform psychotherapy unless the person is granted a license under the rules promulgated under par. (am).

Cross−reference: See also chs. SPS 140, 141, and 142, Wis. adm. code.

(e) Subject to the rules promulgated under sub. (1), the department may make investigations and conduct hearings to determine whether a violation of this subsection or any rule promulgated under par. (d) has occurred and may reprimand a person who is registered under par. (a) or holds a license granted under the rules promulgated under par. (am) or may deny, limit, suspend, or revoke a certificate of registration granted under par. (a) or a license granted under the rules promulgated under par. (am) if the department finds that the applicant or certificate or license holder has violated this subsection or any rule promulgated under par. (d).

(f) A person who is registered under par. (a) or holds a license granted under the rules promulgated under par. (am) who violates this subsection or any rule promulgated under par. (d) may be fined not more than $200 or imprisoned for not more than 6 months or both.

(15) The department shall promulgate rules that establish the fees specified in ss. 440.05 (10) and 440.08 (2) (d).

(16) Annually, the department shall distribute the form developed by the medical and optometry examining boards under 2001 Wisconsin Act 16, section 9143 (3c), to all school districts and charter schools that offer kindergarten, to be used by pupils to provide evidence of eye examinations under s. 118.135.

(17) (a) In this subsection:

1. "Disqualified offender" means any of the following:

a. A person who is required to comply with the reporting requirements under s. 301.45 (1g).

b. A person who has been convicted of a violation of s. 940.01 or a violation of the law of another state or the United States that would be a violation of s. 940.01 if committed in this state.

2. "Martial arts instruction" means instruction in self−defense or combat, but does not include instruction in the use of a firearm, bow and arrow, or crossbow.

(b) No person may, for a fee, provide martial arts instruction to a minor if the person is a disqualified offender.

(c) No person may, for a fee, provide martial arts instruction to a minor unless the person has been issued a permit under this subsection.

(d) Except as provided in par. (e), the department shall grant a juvenile martial arts instructor permit to a person if the person pays the fee specified in s. 440.05 (1).

(e) Pursuant to s. 440.03 (13) (b), the department shall investigate an applicant for a permit under this subsection. Notwithstanding ss. 111.321, 111.322, and 111.335, the department may not issue a juvenile martial arts instructor permit to a person who is a disqualified offender and shall revoke a permit issued to a person under this subsection if, after the permit is issued, the person becomes a disqualified offender.

(f) If a person who holds a permit under this subsection becomes a disqualified offender, the person shall notify the department within 14 days of the date of the conviction.

(g) The department may conduct periodic audits to determine whether any person who holds a permit under this subsection is a disqualified offender.

History: 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340; 1989 a. 31, 340; 1991 a. 39; 1993 a. 16, 102, 107, 443, 445, 490, 491; 1995 a. 27 ss. 6472g, 6472j, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312, 313, 318; 1997 a. 231, 237; 1997 a. 261 ss. 1 to 4, 7, 10, 13; 1997 a. 311; 1999 a. 9, 32; 2001 a. 16, 66, 80; 2003 a. 151; 2005 a. 25; 2007 a. 20 ss. 3449 to 3462, 9121 (6) (a); 2007 a. 153, 189; 2009 a. 28, 130, 276, 282, 355; 2011 a. 32, 146, 160, 190, 255.

Cross−reference: See also SPS, Wis. adm. code.

Notwithstanding the absence of any state statute limiting eligibility for professional licenses or credentials to persons who are in the country legally, federal law is controlling so that the Department of Regulation and Licensing is prohibited from granting any professional license or credential to an alien who is present in the United States illegally. Because the department is prohibited from issuing professional licenses or credentials to illegal aliens, the department must put in place some proce-

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dure practicably designed to reasonably insure that it does not issue licenses or credentials in violation of federal law. OAG 3−07.

440.032 Sign language interpreting. (1) DEFINITIONS. In this section:

(a) "Client" means a deaf or hard of hearing person for whom a person provides interpretation services.

(b) "Council" means the sign language interpreter council.

(c) "Support service provider" means an individual who is trained to act as a link between a person who is deaf and blind and the person's environment.

(d) "Wisconsin interpreting and transliterating assessment" means a program administered by the department of health services to determine and verify the level of competence of communication access services providers who are not certified by the Registry of Interpreters for the Deaf, Inc., or its successor, the National Association of the Deaf or its successor, or other similar nationally recognized certification organization, or a successor program administered by the department of health services.

(2) LICENSE REQUIRED. (a) Except as provided in pars. (b) and (c), no person may, for compensation, provide sign language interpretation services for a client unless the person is licensed by the department under sub. (3).

(b) No license is required under this subsection for any of the following:

1. A person interpreting in a court proceeding if the person is certified by the supreme court to act as a qualified interpreter in court proceedings under s. 885.38 (2).

2. A person interpreting at any school or school−sponsored event if the person is licensed by the department of public instruction as an educational interpreter.

3. A person interpreting at a religious service or at a religious function, including educational or social events sponsored by a religious organization. This subdivision does not apply to a person interpreting for a religious organization at a professional service provided or sponsored by the religious organization.

4. A support service provider interpreting for the purpose of facilitating communication between an individual who provides interpretation services and a client of the individual.

5. A person who, in the course of the person's employment, provides interpretation services during an emergency unless the interpretation services are provided during a period that exceeds 24 hours.

(c) 1. The council may grant a temporary exemption to an individual who is not a resident of this state that authorizes the individual to provide interpretation services for a period not to exceed 20 days, if the individual is certified by the Registry of Interpreters for the Deaf, Inc., or its successor, or the National Association of the Deaf or its successor. The council may not grant an individual more than 2 temporary exemptions under this subdivision per year.

2. The council may grant a temporary or permanent exemption to an individual who is a resident of this state that authorizes the individual to provide interpretation services for a period specified by the council or for persons specified by the council.

(3) LICENSURE REQUIREMENTS. (a) *Renewable licenses.* 1. The department shall grant a license as a sign language interpreter to an applicant who submits an application on a form provided by the department, pays the fee determined by the department under s. 440.03 (9) (a), and submits evidence satisfactory to the department that the applicant has received an associate degree in sign language interpretation or has received a certificate of completion of an education and training program regarding such interpretation, and the applicant has one of the following:

a. Any valid certification granted by the Registry of Interpreters for the Deaf, Inc., or its successor.

b. A valid certification level 3, 4, or 5 granted by the National Association of the Deaf or its successor.

c. Any valid certification granted by any other organization that the department determines is substantially equivalent to a certification specified in subd. 1. a. or b.

2. The department shall grant a license as a sign language interpreter to an applicant who submits an application on a form provided by the department and pays the fee determined by the department under s. 440.03 (9) (a), if the applicant has a certification specified in subd. 1. a. and if the applicant provides to the department satisfactory evidence of a diagnosis by a physician that the applicant is deaf or hard of hearing.

3. The department shall grant a license as a sign language interpreter to an applicant who has not received an associate degree in sign language interpretation or a certificate of completion of an education and training program regarding such interpretation, but who otherwise satisfies the requirements in subd. 1. (intro.), if, within 24 months after establishing residency in the state, the applicant provides evidence satisfactory to the department that the applicant holds one of the certifications specified in subd. 1. a., b., or c., that the applicant obtained the certification prior to establishing residency in the state, and that the applicant held the certification at the time the applicant established residency in the state.

(b) *Restricted licenses.* 1. The department shall grant a license as a sign language interpreter to an applicant who submits an application on a form provided by the department, pays the fee determined by the department under s. 440.03 (9) (a), and submits evidence satisfactory to the department of all of the following:

a. The applicant has received an associate degree in sign language interpretation or has received a certificate of completion of an education and training program regarding such interpretation.

b. The applicant is verified by the Wisconsin interpreting and transliterating assessment at level 2 or higher in both interpreting and transliterating.

c. The applicant has passed the written examination administered by the Registry of Interpreters for the Deaf, Inc., or its successor.

d. The applicant is an associate or student member of the Registry of Interpreters for the Deaf, Inc., or its successor.

2. The department shall grant a restricted license as a sign language interpreter, authorizing the holder to provide interpretation services only under the supervision of an interpreter licensed under par. (a), to an applicant who submits an application on a form provided by the department, pays the fee determined by the department under s. 440.03 (9) (a), and submits evidence satisfactory to the department of all of the following:

a. The applicant has been diagnosed by a physician as deaf or hard of hearing.

b. The applicant has completed 8 hours of training sponsored by the Registry of Interpreters for the Deaf, Inc., or its successor, on the role and function of deaf interpreters.

c. The applicant has completed 8 hours of training sponsored by the Registry of Interpreters for the Deaf, Inc., or its successor, on professional ethics.

d. The applicant has obtained letters of recommendation from at least 3 individuals who have held national certification for at least 5 years and who are members in good standing of the Registry of Interpreters for the Deaf, Inc., or its successor, if the letters together document that the applicant has completed at least 40 hours of mentoring, including at least 20 hours observing professional work and at least 10 hours observing certified deaf interpreters.

e. The applicant has completed at least 40 hours of training consisting of workshops sponsored by the Registry of Interpreters for the Deaf, Inc., or its successor, or other relevant courses.

f. The applicant is an associate or student member of the Registry of Interpreters for the Deaf, Inc., or its successor.

g. The applicant has a high school diploma or an equivalent.

3. A license granted under subd. 1. or 2. may be renewed twice and is not valid upon the expiration of the 2nd renewal period.

(4) NOTIFICATION REQUIRED. A person who is licensed under sub. (3) shall notify the department in writing within 30 days if the person's certification or membership specified in sub. (3) that is required for the license is revoked or invalidated. The department shall revoke a license granted under sub. (3) if such a certification or membership is revoked or invalidated.

(5) LICENSE RENEWAL. The renewal dates for licenses granted under sub. (3) (a) are specified in s. 440.08 (2) (a) 68c. Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee determined by the department under s. 440.03 (9) (a) and evidence satisfactory to the department that the person's certification or membership specified in sub. (3) that is required for the license has not been revoked or invalidated.

(6) COUNCIL. The council shall do all of the following:

(a) Make recommendations to the department regarding the promulgation of rules establishing a code of ethics that governs the professional conduct of persons licensed under sub. (3).

(b) Advise the department regarding the promulgation and implementation of rules regarding the practice of sign language interpreters.

(c) Advise the legislature regarding legislation affecting sign language interpreters.

(d) Promulgate rules establishing a process and criteria for granting exemptions under sub. (2) (c) 2.

(e) Assist the department in alerting sign language interpreters and the deaf community in this state to changes in the law affecting the practice of sign language interpreters.

(7) RULE MAKING. (a) The department may not promulgate rules that impose requirements for granting a license that are in addition to the requirements specified in sub. (3).

(b) After considering the recommendations of the council, the department shall promulgate rules that establish a code of ethics that governs the professional conduct of persons licensed under sub. (3). In promulgating rules under this paragraph, the department shall consider including as part or all of the rules part or all of the code of ethics established by the Registry of Interpreters for the Deaf, Inc., or its successor. The department shall periodically review the code of ethics established by the Registry of Interpreters for the Deaf, Inc., or its successor, and, if appropriate, revise the rules promulgated under this paragraph to reflect revisions to that code of ethics.

(8) DISCIPLINARY PROCEEDINGS AND ACTIONS. Subject to the rules promulgated under s. 440.03 (1), the department may make investigations and conduct hearings to determine whether a violation of this section or any rule promulgated under this section has occurred and may reprimand a person who is licensed under sub. (3) or may deny, limit, suspend, or revoke a license granted under sub. (3) if it finds that the applicant or licensee has violated this section or any rule promulgated under this section.

(9) PENALTY. A person who violates this section or any rule promulgated under this section may be fined not more than $200 or imprisoned for not more than 6 months or both.

History: 2009 a. 360.

440.035 General duties of examining boards and affiliated credentialing boards. Each examining board or affiliated credentialing board attached to the department or an examining board shall:

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

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

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

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

History: 1977 c. 418 ss. 25, 793, 929 (41); 1979 c. 32 s. 92 (1); 1979 c. 34; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 107; 1997 a. 27, 191, 237.

440.04 Duties of the secretary. The secretary shall:

(1) Centralize, at the capital and in such district offices as the operations of the department and the attached examining boards and affiliated credentialing boards require, the routine housekeeping functions required by the department, the examining boards and the affiliated credentialing boards.

(2) Provide the bookkeeping, payroll, accounting and personnel advisory services required by the department and the legal services, except for representation in court proceedings and the preparation of formal legal opinions, required by the attached examining boards and affiliated credentialing boards.

(3) Control the allocation, disbursement, and budgeting of the funds received by the examining boards and affiliated credentialing boards in connection with their credentialing and regulation, including the reimbursement of board members for actual and necessary expenses, including travel expenses, incurred in the performance of their duties.

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

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

(a) Provide the department with such supplies, equipment, office space and meeting facilities as are required for the efficient operation of the department.

(b) Make all arrangements for meetings, hearings and examinations.

(c) Provide such other services as the examining boards or affiliated credentialing boards request.

(6) Appoint outside the classified service an administrator for any division established in the department and a director for any bureau established in the department as authorized in s. 230.08 (2). The secretary may assign any bureau director appointed in accordance with this subsection to serve concurrently as a bureau director and a division administrator.

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

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

History: 1977 c. 418 s. 26; 1979 c. 34; 1981 c. 20; 1985 a. 29; 1987 a. 27; 1989 a. 316; 1991 a. 39; 1993 a. 102, 107; 1995 a. 333; 2003 a. 270; 2011 a. 32.

440.042 Advisory committees. (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards, and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. The secretary shall appoint an advisory com-

mittee to advise the department on matters relating to making investigations, conducting hearings, and taking disciplinary action under s. 440.986. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his or her actual and necessary expenses incurred in the performance of his or her duties.

(2) Any person who in good faith testifies before the department or any examining board, affiliated credentialing board or board in the department or otherwise provides the department or any examining board, affiliated credentialing board or board in the department with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such advice or information. The good faith of any person specified in this subsection shall be presumed in any civil action and an allegation that such a person has not acted in good faith must be proven by clear and convincing evidence.

History: 1993 a. 16 ss. 3269, 3299; 1993 a. 107; 1997 a. 156; 1999 a. 32; 2005 a. 292.

440.045 Disputes. Any dispute between an examining board or an affiliated credentialing board and the secretary shall be arbitrated by the governor or the governor's designee after consultation with the disputants.

History: 1977 c. 418 s. 27; 1979 c. 34; 1993 a. 107.

The relationship between the department, cosmetology examining board, and governor is discussed. 70 Atty. Gen. 172.

440.05 Standard fees. The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 444.03, 444.11, 446.02 (2) (c), 447.04 (2) (c) 2., 449.17 (1m) (d), and 449.18 (2) (d):

(1) (a) Initial credential: An amount determined by the department under s. 440.03 (9) (a). Each applicant for an initial credential shall pay the initial credential fee to the department when the application materials for the initial credential are submitted to the department, except that no fee is required under this paragraph for an individual who is eligible for the veterans fee waiver program under s. 45.44.

(b) Examination: If an examination is required, the applicant shall pay an examination fee to the department. If the department prepares, administers, or grades the examination, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of preparing, administering, or grading the examination. If the department approves an examination prepared, administered, and graded by a test service provider, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of approving the examination, including selecting, evaluating, and reviewing the examination.

(2) (a) Reciprocal credential, including any credential described in s. 440.01 (2) (d) and any credential that permits temporary practice in this state in whole or in part because the person holds a credential in another jurisdiction: Except as provided in par. (b), the applicable credential renewal fee determined by the department under s. 440.03 (9) (a) and, if an examination is required, an examination fee under sub. (1).

(b) No reciprocal credential fee is required under this subsection for an individual who seeks an initial reciprocal credential in this state and who is eligible for the veterans fee waiver program under s. 45.44.

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

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

(9) Endorsement of persons who are credentialed to other states: $10.

(10) Expedited service: If an applicant for a credential requests that the department process an application on an expedited basis, the applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

History: 1977 c. 29, 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1983 a. 27; 1985 a. 29; 1987 a. 264, 265, 329, 399, 403; 1989 a. 31, 229, 307, 316, 336, 340, 341, 359; 1991 a. 39, 269, 278, 315; 1993 a. 16; 1995 a. 27; 1997 a. 27, 96; 1999 a. 9; 2001 a. 16; 2003 a. 150, 270, 285, 327; 2005 a. 25, 297; 2007 a. 20; 2011 a. 209.

Cross−reference: See also ch. SPS 4, Wis. adm. code.

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

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

History: 1995 a. 27; 1999 a. 9.

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

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

Cross−reference: See also ch. SPS 4, Wis. adm. code.

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

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

(a) Prepare, administer and grade examinations.

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

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

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

Cross−reference: See also ch. SPS 4, Wis. adm. code.

Department of Regulation and Licensing test scores were subject to disclosure under the open records law. Munroe v. Braatz, 201 Wis. 2d 442, 549 N.W.2d 452 (Ct. App. 1996), 95−2557.

440.075 Military service education, training, instruction, or other experience. (1) In this section, "instruction" means any education, training, instruction, or other experience related to an occupation or profession.

(2) The department, if the department issues the credential, or the credentialing board, if a credentialing board issues the credential, shall count any relevant instruction that an applicant for an initial credential has obtained in connection with the applicant's military service, as defined in s. 111.32 (12g), toward satisfying any instruction requirements for that credential if the applicant demonstrates to the satisfaction of the department or credentialing board that the instruction obtained by the applicant is substantially equivalent to the instruction required for the initial credential.

History: 2011 a. 120.

440.08 Credential renewal. (1) NOTICE OF RENEWAL. The department shall give a notice of renewal to each holder of a credential at least 30 days prior to the renewal date of the credential.

Notice may be mailed to the last address provided to the department by the credential holder or may be given by electronic transmission. Failure to receive a notice of renewal is not a defense in any disciplinary proceeding against the holder or in any proceeding against the holder for practicing without a credential. Failure to receive a notice of renewal does not relieve the holder from the obligation to pay a penalty for late renewal under sub. (3).

(2) RENEWAL DATES, FEES AND APPLICATIONS. (a) Except as provided in par. (b) and in ss. 440.51, 442.04, 444.03, 444.11, 447.04 (2) (c) 2., 448.065, 449.17 (1m) (d), and 449.18 (2) (d), the renewal dates for credentials are as follows:

1. Accountant, certified public: December 15 of each odd−numbered year.

3. Accounting corporation or partnership: December 15 of each odd−numbered year.

4. Acupuncturist: July 1 of each odd−numbered year.

4m. Advanced practice nurse prescriber: October 1 of each even−numbered year.

5. Aesthetician: April 1 of each odd−numbered year.

6. Aesthetics establishment: April 1 of each odd−numbered year.

7. Aesthetics instructor: April 1 of each odd−numbered year.

8. Aesthetics school: April 1 of each odd−numbered year.

9. Aesthetics specialty school: April 1 of each odd−numbered year.

9m. Substance abuse counselor, clinical supervisor, or prevention specialist: except as limited in s. 440.88 (4), March 1 of each odd−numbered year.

10. Anesthesiologist assistant: October 1 of each even−numbered year.

NOTE: Subd. 10. is created eff. 11−1−12 by 2011 Wis. Act 160.

11. Appraiser, real estate, certified general: December 15 of each odd−numbered year.

11m. Appraiser, real estate, certified residential: December 15 of each odd−numbered year.

12. Appraiser, real estate, licensed: December 15 of each odd−numbered year.

13. Architect: August 1 of each even−numbered year.

14. Architectural or engineering firm, partnership or corporation: February 1 of each even−numbered year.

14d. Athlete agent: July 1 of each even−numbered year.

14f. Athletic trainer: July 1 of each even−numbered year.

14g. Auction company: December 15 of each even−numbered year.

14r. Auctioneer: December 15 of each even−numbered year.

15. Audiologist: February 1 of each odd−numbered year.

15m. Barber: April 1 of each odd−numbered year.

16. Barbering establishment: April 1 of each odd−numbered year.

17. Barbering instructor: April 1 of each odd−numbered year.

18. Barbering manager: April 1 of each odd−numbered year.

19. Barbering school: April 1 of each odd−numbered year.

20m. Behavior analyst: December 15 of each even−numbered year.

21. Cemetery authority, licensed: December 15 of each even−numbered year.

21m. Cemetery authority, registered: December 15 of each even−numbered year; $10.

22. Cemetery preneed seller: December 15 of each even−numbered year.

23. Cemetery salesperson: December 15 of each even−numbered year.

23m. Charitable organization: August 1 of each year.

23p. Chiropractic radiological technician: December 15 of each even−numbered year.

23s. Chiropractic technician: December 15 of each even−numbered year.

24. Chiropractor: December 15 of each even−numbered year.

24b. Cosmetologist: April 1 of each odd−numbered year.

24d. Cosmetology establishment: April 1 of each odd−numbered year.

24g. Cosmetology instructor: April 1 of each odd−numbered year.

24i. Cosmetology manager: April 1 of each odd−numbered year.

24k. Cosmetology school: April 1 of each odd−numbered year.

24m. Crematory authority: January 1 of each even−numbered year.

25. Dental hygienist: October 1 of each odd−numbered year.

26. Dentist: October 1 of each odd−numbered year.

26m. Dentist, faculty member: October 1 of each odd−numbered year.

27. Designer of engineering systems: February 1 of each even−numbered year.

27m. Dietitian: November 1 of each even−numbered year.

29. Drug manufacturer: June 1 of each even−numbered year.

30. Electrologist: April 1 of each odd−numbered year.

31. Electrology establishment: April 1 of each odd−numbered year.

32. Electrology instructor: April 1 of each odd−numbered year.

33. Electrology school: April 1 of each odd−numbered year.

34. Electrology specialty school: April 1 of each odd−numbered year.

35. Engineer, professional: August 1 of each even−numbered year.

35m. Fund−raising counsel: September 1 of each even−numbered year.

36. Funeral director: December 15 of each odd−numbered year.

37. Funeral establishment: June 1 of each odd−numbered year.

38. Hearing instrument specialist: February 1 of each odd−numbered year.

38g. Home inspector: December 15 of each even−numbered year.

38j. Juvenile martial arts instructor: September 1 of each even−numbered year.

38m. Landscape architect: August 1 of each even−numbered year.

39. Land surveyor: February 1 of each even−numbered year.

39m. Limited X−ray machine operator: September 1 of each even−numbered year.

42. Manicuring establishment: April 1 of each odd−numbered year.

43. Manicuring instructor: April 1 of each odd−numbered year.

44. Manicuring school: April 1 of each odd−numbered year.

45. Manicuring specialty school: April 1 of each odd−numbered year.

46. Manicurist: April 1 of each odd−numbered year.

46m. Marriage and family therapist: March 1 of each odd−numbered year.

46r. Massage therapist or bodywork therapist: March 1 of each odd−numbered year.

46w. Midwife, licensed: July 1 of each even−numbered year.

48. Nurse, licensed practical: May 1 of each odd−numbered year.

49. Nurse, registered: March 1 of each even−numbered year.

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50. Nurse−midwife: March 1 of each even−numbered year.

51. Nursing home administrator: July 1 of each even−numbered year.

52. Occupational therapist: June 1 of each odd−numbered year.

53. Occupational therapy assistant: June 1 of each odd−numbered year.

54. Optometrist: December 15 of each odd−numbered year.

54m. Perfusionist: March 1 of each even−numbered year.

55. Pharmacist: June 1 of each even−numbered year.

56. Pharmacy, in−state and out−of−state: June 1 of each even−numbered year.

57. Physical therapist: March 1 of each odd−numbered year.

57m. Physical therapist assistant: March 1 of each odd−numbered year.

58. Physician, other than a physician who possesses the degree of doctor of osteopathy: November 1 of each odd−numbered year.

58m. Physician who possesses the degree of doctor of osteopathy: March 1 of each even−numbered year.

59. Physician assistant: March 1 of each odd−numbered year.

60. Podiatrist: November 1 of each even−numbered year.

61. Private detective: September 1 of each even−numbered year.

62. Private detective agency: September 1 of each odd−numbered year.

63. Private practice school psychologist: October 1 of each odd−numbered year.

63g. Private security person: September 1 of each even−numbered year.

63m. Professional counselor: March 1 of each odd−numbered year.

63p. Professional employer organization or professional employer group: July 31 of each year.

63t. Professional fund−raiser: September 1 of each even−numbered year.

63u. Professional geologist: August 1 of each even−numbered year.

63v. Professional geology, hydrology or soil science firm, partnership or corporation: August 1 of each even−numbered year.

63w. Professional hydrologist: August 1 of each even−numbered year.

63x. Professional soil scientist: August 1 of each even−numbered year.

64. Psychologist: October 1 of each odd−numbered year.

64g. Radiographer, licensed: September 1 of each even−numbered year.

65. Real estate broker: December 15 of each even−numbered year.

66. Real estate business entity: December 15 of each even−numbered year.

67. Real estate salesperson: December 15 of each even−numbered year.

67m. Registered interior designer: August 1 of each even−numbered year.

67v. Registered music, art or dance therapist: October 1 of each odd−numbered year.

67x. Registered music, art, or dance therapist with psychotherapy license: October 1 of each odd−numbered year.

68. Respiratory care practitioner: July 1 of each even−numbered year.

68b. Sanitarian: January 1 of each even−numbered year.

68c. Sign language interpreter: September 1 of each odd−numbered year.

68d. Social worker: March 1 of each odd−numbered year.

68h. Social worker, advanced practice: March 1 of each odd−numbered year.

68p. Social worker, independent: March 1 of each odd−numbered year.

68t. Social worker, independent clinical: March 1 of each odd−numbered year.

68v. Speech−language pathologist: February 1 of each odd−numbered year.

69. Time−share salesperson: December 15 of each even−numbered year.

70. Veterinarian: December 15 of each odd−numbered year.

71. Veterinary technician: December 15 of each odd−numbered year.

72. Wholesale distributor of prescription drugs: June 1 of each even−numbered year.

(b) The renewal fee for an apprentice, journeyman, student or temporary credential is $10. The renewal dates specified in par. (a) do not apply to apprentice, journeyman, student or temporary credentials.

(c) Except as provided in sub. (3), renewal applications shall include the applicable renewal fee as determined by the department under s. 440.03 (9) (a) or as specified in par. (b).

(d) If an applicant for credential renewal requests that the department process an application on an expedited basis, the applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

(3) LATE RENEWAL. (a) Except as provided in rules promulgated under par. (b), if the department does not receive an application to renew a credential before its renewal date, the holder of the credential may restore the credential by payment of the applicable renewal fee determined by the department under s. 440.03 (9) (a) and by payment of a late renewal fee of $25.

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

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

(b) *Applicability.* This subsection does not apply to a denial of a credential renewal under s. 440.12 or 440.13 (2) (b).

History: 1991 a. 39 ss. 3305, 3313; 1991 a. 78, 160, 167, 269, 278, 315; 1993 a. 3, 16, 102, 105, 107, 443, 463, 465; 1993 a. 490 ss. 228 to 230, 274, 275; 1995 a. 27, 233, 321, 322, 461; 1997 a. 27, 75, 81, 96, 156, 191, 237, 261, 300; 1999 a. 9, 32; 2001

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a. 16, 70, 74, 80, 89; 2003 a. 150, 270, 285, 327; 2005 a. 25, 31, 242, 292, 297, 407; 2007 a. 20, 174, 189; 2009 a. 28, 29, 106, 130, 174, 282, 355, 360; 2011 a. 160, 190, 258.

440.09 Reciprocal credentials for the spouses of service members. (1) In this section, "service member" means a member of the U.S. armed forces, a reserve unit of the U.S. armed forces, or the national guard of any state.

(2) The department and each credentialing board shall grant a reciprocal credential to an individual who the department or credentialing board determines meets all of the following requirements:

(a) The individual applies for a reciprocal credential under this section on a form prescribed by the department or credentialing board.

(b) The individual is the spouse of a service member, and the spouse and service member temporarily reside in this state as a result of the service member's service in the U.S. armed forces, a reserve unit of the U.S. armed forces, or the national guard of any state.

(c) The individual holds a license, certification, registration, or permit that was granted by a governmental authority in a jurisdiction outside this state that qualifies the individual to perform the acts authorized under the appropriate credential granted by the department or credentialing board.

(d) The individual pays the fee specified under s. 440.05 (2).

(e) The individual meets any other requirements established by the department or credentialing board by rule.

(3) A reciprocal credential granted under this section expires 180 days after the date the department or credentialing board issues the reciprocal credential unless, upon application by the holder of the reciprocal credential, the department or credentialing board extends the reciprocal credential.

History: 2011 a. 210.

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

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

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

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

440.12 Credential denial, nonrenewal and revocation based on tax delinquency. Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if the department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes, as defined in s. 73.0301 (1) (c).

History: 1997 a. 237.

Cross−reference: See also ch. SPS 9, Wis. adm. code.

440.121 Credential denial, nonrenewal, and revocation based on incompetency. Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential issued to an individual for whom the department receives a record of a declaration under s. 54.25 (2) (c) 1. d. stating that the individual is incompetent to apply for a credential under chs. 440 to 480.

History: 2005 a. 387.

440.13 Delinquency in support payments; failure to comply with subpoena or warrant. (1) In this section:

(b) "Memorandum of understanding" means a memorandum of understanding entered into by the department of safety and professional services and the department of children and families under s. 49.857.

(c) "Support" has the meaning given in s. 49.857 (1) (g).

(2) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of an initial credential or credential renewal, as provided in the memorandum of understanding:

(a) With respect to a credential granted by the department, the department shall restrict, limit, or suspend a credential or deny an application for an initial credential if the credential holder or applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(b) With respect to credential renewal, the department shall deny an application for renewal if the applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(c) With respect to a credential granted by a credentialing board, a credentialing board shall restrict, limit or suspend a credential held by a person or deny an application for an initial credential or for reinstatement of an inactive license under s. 452.12 (6) (e) when directed to do so by the department.

History: 1997 a. 191, 237; 2007 a. 20; 2011 a. 32.

440.14 Nondisclosure of certain personal information. (1) In this section:

(a) "List" means information compiled or maintained by the department or a credentialing board that contains the personal identifiers of 10 or more individuals.

(b) "Personal identifier" means a social security number, telephone number, street name and number, electronic mail address, or post−office box number.

(2) If a form that the department or a credentialing board requires an individual to complete in order to apply for a credential or credential renewal or to obtain a product or service from the department or the credentialing board requires the individual to provide any of the individual's personal identifiers, the form shall include a place for the individual to declare that the individual's personal identifiers obtained by the department or the credentialing board from the information on the form may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(3) If the department or a credentialing board requires an individual to provide, by telephone or other electronic means, any of the individual's personal identifiers in order to apply for a credential or credential renewal or to obtain a product or service from the department or a credentialing board, the department or the credentialing board shall ask the individual at the time that the individual provides the information if the individual wants to declare that the individual's personal identifiers obtained by telephone or other electronic means may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(4) The department or a credentialing board shall provide to an individual upon request a form that includes a place for the individual to declare that the individual's personal identifiers obtained by the department or credentialing board may not be disclosed on any list that the department or credentialing board furnishes to another person.

(5) (a) The department or a credentialing board may not disclose on any list that it furnishes to another person a personal identifier of any individual who has made a declaration under sub. (2), (3) or (4).

(b) Paragraph (a) does not apply to a list that the department or a credentialing board furnishes to another state agency, a law enforcement agency or a federal governmental agency. In addition, par. (a) does not apply to a list that the department or the board of nursing furnishes to the coordinated licensure information system under s. 441.50 (7). A state agency that receives a list from the department or a credentialing board containing a personal identifier of any individual who has made a declaration under sub. (2), (3) or (4) may not disclose the personal identifier to any person other than a state agency, a law enforcement agency or a federal governmental agency.

History: 1999 a. 88; 2001 a. 66; 2009 a. 388.

440.15 No fingerprinting. Except as provided under s. 440.03 (13) (c), the department or a credentialing board may not require that an applicant for a credential or a credential holder be fingerprinted or submit fingerprints in connection with the department's or the credentialing board's credentialing.

History: 2011 a. 255.

440.19 Voluntary surrender of license, permit, or certificate. A person who holds a license, permit, or certificate of certification or registration issued under chs. 440 to 480 may voluntarily surrender that license, permit, or certificate of certification or registration. The department, examining board, affiliated credentialing board, or board of the department that issued the license, permit, or certificate of certification or registration may refuse to accept that surrender if a complaint has been filed or disciplinary proceeding has been commenced against the person under s. 440.20.

History: 2011 a. 146.

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

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

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

History: 1977 c. 418; 1979 c. 34; 1985 a. 29; 1989 a. 31, 201; 1991 a. 39; 1993 a. 16, 27, 102, 107, 490; 2009 a. 209.

The constitutionality of sub. (3) is upheld. Gandhi v. Medical Examining Board, 168 Wis. 2d 299, 483 N.W.2d 295 (Ct. App. 1992).

A hearing is not required for a complaint filed under this section. 68 Atty. Gen. 30.

The "preponderance of the evidence" burden of proof under sub. (3) does not violate the due process rights of a licensee. 75 Atty. Gen. 76.

440.205 Administrative warnings. If the department or a board, examining board or affiliated credentialing board in the department determines during an investigation that there is evidence of misconduct by a credential holder, the department, board, examining board or affiliated credentialing board may close the investigation by issuing an administrative warning to the credential holder. The department or a board, examining board or affiliated credentialing board may issue an administrative warning under this section only if the department or board, examining board or affiliated credentialing board determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the issuance of an administrative warning adequately protects the public by putting the credential holder on notice that any subsequent violation may result in disciplinary action. If an administrative warning is issued, the credential holder may obtain a review of the administrative warning through a personal appearance before the department, board, examining board or affiliated credentialing board that issued the administrative warning. Administrative warnings do not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct. However, if a subsequent allegation of misconduct by the credential holder is received by the department or a board, examining board or affiliated credentialing board in the department, the matter relating to the issuance of the administrative warning may be reopened and disciplinary proceedings may be commenced on the matter, or the administrative warning may be used in any subsequent disciplinary proceeding as evidence that the credential holder had actual knowledge that the misconduct that was the basis for the administrative warning was contrary to law. The record that an administrative warning was issued shall be a public record. The contents of the administrative warning shall be private and confidential. The department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.

History: 1997 a. 139.

Cross−reference: See also ch. SPS 8, Wis. adm. code.

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

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

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

(4) (a) Notwithstanding any other provision of chs. 440 to 480 relating to fines, forfeitures, or imprisonment, any person who violates a special order issued under sub. (2) may be required to forfeit not more than $10,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this paragraph.

(b) Notwithstanding any other provision of chs. 440 to 480 relating to fines, forfeitures, or imprisonment, any person who violates a temporary restraining order or an injunction issued by a court upon a petition under sub. (3) may be fined not less than $25 nor more than $5,000 or imprisoned for not more than one year in the county jail or both.

History: 1991 a. 39; 1993 a. 102; 2011 a. 146.

Cross−reference: See also ch. SPS 3, Wis. adm. code.

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

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department. Interest shall accrue on costs assessed under this subsection at a rate of 12% per

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year beginning on the date that payment of the costs are due as ordered by the department, examining board, affiliated credentialing board or board. Upon the request of the department of safety and professional services, the department of justice may commence an action to recover costs assessed under this subsection and any accrued interest.

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

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27; 2011 a. 32.

The collection of costs assessed under this section may not be pursued in an independent action for a money judgment. The costs may be collected only as a condition of reinstatement of the disciplined practitioner's credentials. State v. Dunn, 213 Wis. 2d 363, 570 N.W.2d 614 (Ct. App. 1997), 97−0167.

440.23 Cancellation of credential; reinstatement. (1) If the holder of a credential pays a fee required under s. 440.05 (1) or (6), 440.08, 444.03, or 444.11 by check or debit or credit card and the check is not paid by the financial institution upon which the check is drawn or if the demand for payment under the debit or credit card transaction is not paid by the financial institution upon which demand is made, the department may cancel the credential on or after the 60th day after the department receives the notice from the financial institution, subject to sub. (2).

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

(a) Pays the fee for which the unpaid check or demand for payment under the credit or debit card transaction was issued.

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

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

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

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

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

History: 1989 a. 31; 1991 a. 39, 189, 269, 278, 315; 1993 a. 16; 1995 a. 27; 1999 a. 9; 2003 a. 270, 285, 327.

440.25 Judicial review. The department may seek judicial review under ch. 227 of any final disciplinary decision of the medical examining board or affiliated credentialing board attached to the medical examining board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the medical examining board or the interested affiliated credentialing board, the attorney general may represent the board. If the attorney general declines to represent the board, the board may retain special counsel which shall be paid for out of the appropriation under s. 20.165 (1) (hg).

History: 1985 a. 340; 1993 a. 107; 2009 a. 28.

SUBCHAPTER II

PRIVATE DETECTIVES, PRIVATE SECURITY PERSONS

440.26 Private detectives, investigators and security personnel; licenses and permits. (1) LICENSE OR PERMIT REQUIRED. (a) No person may do any of the following unless he or she has a license or permit issued under this section:

1. Advertise, solicit or engage in the business of operating a private detective agency.

2. Act as a private detective, investigator, special investigator or private security person.

3. Act as a supplier of private security personnel.

4. Solicit business or perform any other type of service or investigation as a private detective or private security person.

11. Receive any fees or compensation for acting as any person, engaging in any business or performing any service specified in subds. 1. to 4.

(b) The department may promulgate rules specifying activities in which a person may engage without obtaining a license or permit under this section.

(1m) DEFINITION. In this section:

(h) "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.* The department may do any of the following:

1. Issue a private detective agency license to an individual, partnership, limited liability company or corporation that meets the qualifications specified under par. (c). The department may not issue a license under this subdivision unless the individual or each member of the partnership or limited liability company or officer or director of the corporation who is actually engaged in the work of a private detective is issued a private detective license under this section.

2. Issue a private detective license to an individual who meets the qualifications specified under par. (c) if the individual is an owner, co−owner or employee of a private detective agency required to be licensed under this section.

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

(c) *Approval.* 1. Subject to subds. 2. and 3., 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.

2. An individual who has been convicted in this state or elsewhere of a felony and who has not been pardoned for that felony is not eligible for a license under this section.

3. The department may not issue a license under this section to an individual unless the individual is over 18 years of age.

4. 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.

5. The department may, based on rules adopted by the department, refuse to issue a license under this section to an individual

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who has committed any of the acts described in sub. (6) (a) 1. to 5.

(3) ISSUANCE OF LICENSES; FEES. Upon receipt and examination of an application executed under sub. (2), and after any investigation that it considers necessary, the department shall, if it determines that the applicant is qualified, grant the proper license upon payment of the initial credential fee determined by the department under s. 440.03 (9) (a). No license shall be issued for a longer period than 2 years, and the license of a private detective shall expire on the renewal date of the license of the private detective agency, even if the license of the private detective has not 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 applicable fees specified in s. 440.08 or determined by the department under s. 440.03 (9) (a). 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.

(3m) RULES CONCERNING DANGEROUS WEAPONS. The department shall promulgate rules relating to the carrying of dangerous weapons by a person who holds a license or permit issued under this section or who is employed by a person licensed under this section. The rules shall meet the minimum requirements specified in 15 USC 5902 (b) and shall allow all of the following:

(a) A person who is employed in this state by a public agency as a law enforcement officer to carry a concealed firearm if s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3. applies.

(b) A qualified out−of−state law enforcement officer, as defined in s. 941.23 (1) (g), to carry a concealed firearm if s. 941.23 (2) (b) 1. to 3. applies.

(c) A former officer, as defined in s. 941.23 (1) (c), to carry a concealed firearm if s. 941.23 (2) (c) 1. to 7. applies.

(d) A licensee, as defined in s. 175.60 (1) (d), or an out−of−state licensee, as defined in s. 175.60 (1) (g), to carry a concealed weapon as permitted under s. 175.60.

(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 $100,000 if the applicant for the license is a private detective agency and includes all principals, partners, members or corporate officers, or in the amount of $2,000 if the applicant is a private detective, has been executed and filed with the department. Such bonds or liability policies shall be furnished by an insurer authorized to do a surety business in this state in a form approved by the department. The person shall maintain the bond or liability policy during the period that the license is in effect.

(4m) REPORTING VIOLATIONS OF LAW. (a) *Definition.* In this subsection, "violation" means a violation of any state or local law that is punishable by a forfeiture.

(b) *Reporting requirement.* A person who holds a license or permit issued under this section and who is convicted of a felony or misdemeanor, or is found to have committed a violation, in this state or elsewhere, shall notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction or the judgment finding that the person committed the violation. Notice may be made by mail and may be proven by showing proof of the date of mailing the notice.

(5) EXEMPTIONS. (a) The requirement that a person acting as a private detective, investigator or special investigator be licensed under this section does not apply to 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, investigator or special investigator is limited to such attorney or firm or to 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.

(b) The license requirements of this section do not apply to any person employed directly or indirectly by the state or by a municipality, as defined in s. 345.05 (1) (c), or to any employee of a railroad company under s. 192.47, or to any employee of a commercial establishment, while the person is acting within the scope of his or her employment and whether or not he or she is on the employer's premises.

(c) An employee of any agency that is licensed as a private detective agency under this section and that is doing business in this state as a supplier of uniformed private security personnel to patrol exclusively on the private property of industrial plants, business establishments, schools, colleges, hospitals, sports stadiums, exhibits and similar activities is exempt from the license requirements of this section while engaged in such employment, if all of the following apply:

1. The employee obtains a private security permit under this sub. (5m).

2. The private detective agency furnishes an up−to−date written record of its employees to the department. The record shall include the name, residence address, date of birth and a physical description of each employee together with a recent photograph and 2 fingerprint cards bearing a complete set of fingerprints of each employee.

3. The private detective agency notifies the department in writing within 5 days of any change in the information under subd. 2. regarding its employees, including the termination of employment of any person.

(5m) PRIVATE SECURITY PERMIT. (a) The department shall issue a private security permit to an individual if all of the following apply:

1. The individual submits an application for a private security permit to the department on a form provided by the department.

2. The individual has not been convicted in this state or elsewhere of a felony, unless he or she has been pardoned for that felony.

3. The individual provides evidence satisfactory to the department that he or she is an employee of a private detective agency described in sub. (5) (c).

4. The individual pays to the department the initial credential fee determined by the department under s. 440.03 (9) (a).

(am) The department may refuse to issue a private security permit to a person who has been convicted of a misdemeanor or found to have violated any state or local law that is punishable by a forfeiture, subject to ss. 111.321, 111.322, and 111.335.

(b) The renewal dates for permits issued under this subsection are specified under s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee determined by the department under s. 440.03 (9) (a).

(c) A private security permit issued under this subsection authorizes the holder of the permit to engage in private security activities described in sub. (5) (c) for an employer described in sub. (5) (c) anywhere in this state.

(d) The department shall maintain a record pertaining to each applicant for a permit under this subsection and each holder of a permit issued under this subsection. The record shall include all information received by the department that is relevant to the approval or denial of the application, the issuance of the permit and any limitations, suspensions or revocations of the permit.

(5r) TEMPORARY PRIVATE SECURITY PERMIT. (a) The department shall issue a temporary private security permit to an individual at the request of the individual if all of the following apply:

1. The individual has completed an application and provided information required under sub. (5m) (a).

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2. The department is not yet able to grant or deny the individual's application because a background check of the individual is not complete.

(b) 1. Except as provided in subd. 2., an individual who has been issued a temporary private security permit under par. (a) may act as a private security person in the same manner as an individual issued a private security permit under sub. (5m).

2. An individual may not carry a dangerous weapon while acting as a private security person under a temporary private security permit issued under par. (a).

(c) 1. Except as provided in subd. 2., a temporary private security permit issued under par. (a) is valid for 30 days.

2. A temporary private security permit issued under par. (a) shall expire on the date that the individual receives written notice from the department that a background check of the individual has been completed and that the department is granting or denying the individual's application for a private security permit, if that date occurs before the end of the period specified in subd. 1.

3. A temporary private security permit issued under par. (a) may not be renewed.

(6) DISCIPLINE. (a) 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 done any of the following:

1. Been convicted of a misdemeanor or found to have violated any state or local law that is punishable by a forfeiture, subject to ss. 111.321, 111.322 and 111.335.

2. Engaged in conduct reflecting adversely on his or her professional qualification.

3. Made a false statement in connection with any application for a license or permit under this section.

4. Violated this section or any rule promulgated or order issued under this section.

5. Failed to maintain a bond or liability policy as required under sub. (4).

(b) Subject to the rules promulgated under s. 440.03 (1), the department shall revoke the license or permit of any person who has been convicted of a felony in this state or elsewhere and who has not been pardoned for that felony.

(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 employee, owner, officer or agent convicted of the above offense may have its agency license revoked or suspended by the department. Any person convicted of the above offense shall be ineligible for a license for one year.

History: 1971 c. 213 s. 5; 1977 c. 29, 125, 418; 1979 c. 102 ss. 45, 236 (3); 1981 c. 334 s. 25 (1); 1981 c. 380, 391; 1983 a. 189 s. 329 (31); 1983 a. 273; 1985 a. 128, 135; 1991 a. 39, 269; 1993 a. 112, 213; 1995 a. 461; 1997 a. 27; 1999 a. 32; 2007 a. 20; 2011 a. 35, 146.

Cross−reference: See s. 134.57 for requirement that all settlements made with an employee 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.

Cross−reference: See also chs. SPS 30, 31, 32, 33, 34, and 35, Wis. adm. code.

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

This section does not 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

BEHAVIOR ANALYSTS

440.310 Definitions. In this subchapter:

(1) "Behavior analyst" means a person who is certified by the Behavior Analyst Certification Board, Inc., as a board−certified behavior analyst and has been granted a license under this subchapter to engage in the practice of behavior analysis.

(2) "Practice of behavior analysis" means the design, implementation, and evaluation of systematic instructional and environmental modifications to produce socially significant improvements in human behavior, including the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis, including interventions based on scientific research and the direct observation and measurement of behavior and environment. "Practice of behavior analysis" does not include psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, marriage counseling, psychoanalysis, hypnotherapy, and long−term counseling as treatment modalities.

History: 2009 a. 282.

440.311 Use of title; penalty. (1) No person may use the title "behavior analyst" or represent or imply that he or she is a behavior analyst unless the person is licensed under this subchapter. This section may not be construed to restrict the practice of behavior analysis by a licensed professional who is not a behavior analyst, if the services performed are within the scope of the professional's practice and are performed commensurate with the professional's training and experience, and the professional does not represent that he or she is a behavior analyst.

(2) Any person who violates sub. (1) may be fined not more than $250, imprisoned not more than 3 months in the county jail, or both.

History: 2009 a. 282.

440.312 Licensure. (1) Except as provided in sub. (2), the department shall grant a license as a behavior analyst to a person under this subchapter if all of the following apply:

(a) The person submits an application to the department on a form provided by the department.

(b) The person pays the initial credential fee determined by the department under s. 440.03 (9) (a).

(c) The person submits evidence satisfactory to the department that the person is a behavior analyst certified by the Behavior Analyst Certification Board, Inc., or its successor organization.

(2) The department may not grant a license under this subchapter to any person who has been convicted of an offense under s. 940.22, 940.225, 940.302 (2) (a) 1. b., 944.06, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.051, 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, 948.11, or 948.12.

History: 2009 a. 282.

440.313 Renewal. (1) The renewal date for licenses granted under this subchapter is specified in s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee determined by the department under s. 440.03 (9) (a).

(2) A behavior analyst shall, at the time that he or she applies for renewal of a license under sub. (1), submit proof satisfactory to the department that he or she is, at the time he or she applies for renewal, certified by the Behavior Analyst Certification Board, Inc., or its successor organization.

History: 2009 a. 282.

440.314 Rules. (1) The department may promulgate rules necessary to administer this subchapter, including rules of conduct by behavior analysts and by holders of temporary permits under sub. (2). Except as provided in subs. (2) and (3), any rules regarding the practice of behavior analysis shall be consistent with standards established by the Behavior Analyst Certification Board, Inc., or its successor organization.

(2) The department may promulgate rules authorizing the department to issue a temporary permit to a person who is certified

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by the Behavior Analyst Certification Board, Inc., or its successor organization authorizing the practice of behavior analysis by the person under the supervision of a behavior analyst licensed under s. 440.312 (1).

(3) The rules may not do any of the following:

(a) Require an applicant for a license under this subchapter to have education in addition to the education required by the Behavior Analyst Certification Board, Inc., or its successor organization.

(b) Require a behavior analyst to practice behavior analysis under the supervision of, or in collaboration with, another health care provider.

(c) Require a behavior analyst to enter into an agreement, written or otherwise, with another health care provider.

(d) Limit the location where a behavior analyst may practice behavior analysis.

History: 2009 a. 282; 2011 a. 260 ss. 55, 80.

440.315 Informed consent. A behavior analyst shall, at an initial consultation with a client, provide a copy of the rules promulgated by the department under this subchapter and shall disclose to the client orally and in writing all of the following:

(1) A summary of the behavior analyst's experience and training.

(2) Any other information required by the department by rule.

History: 2009 a. 282.

440.316 Disciplinary proceedings and actions. (1) Subject to the rules promulgated under s. 440.03 (1), the department may conduct investigations and hearings to determine whether a violation of this subchapter or any rule promulgated under this subchapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the department may reprimand a behavior analyst or deny, limit, suspend, or revoke a license granted under this subchapter if the department finds that the applicant or the behavior analyst has done any of the following:

(a) Intentionally made a material misstatement in an application for a license or for renewal of a license.

(b) Subject to ss. 111.321, 111.322, and 111.34, practiced behavior analysis while his or her ability to engage in the practice was impaired by alcohol or other drugs.

(c) Advertised in a manner that is false or misleading.

(d) In the course of the practice of behavior analysis, made a substantial misrepresentation that was relied upon by a client.

(e) In the course of the practice of behavior analysis, engaged in conduct that evidences an inability to apply the principles or skills of behavior analysis.

(f) Obtained or attempted to obtain compensation through fraud or deceit.

(g) Allowed another person to use a license granted under this subchapter.

(h) Violated any law of this state or federal law that substantially relates to the practice of behavior analysis, violated this subchapter, or violated any rule promulgated under this subchapter.

(i) Engaged in unprofessional conduct.

(3) Subject to the rules promulgated under s. 440.03 (1), the department shall revoke a license granted under this subchapter if the behavior analyst is convicted of any of the offenses specified in 440.312 (2).

History: 2009 a. 282.

440.317 Advisory committee. The department may appoint an advisory committee under s. 440.042 to advise the department on matters relating to the regulation of behavior analysts.

History: 2009 a. 282.

SUBCHAPTER IV

SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES

440.41 Definitions. In this subchapter:

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

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

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

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

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

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

(3) "Charitable sales promotion" means an advertising or sales campaign, conducted by a person who is regularly and primarily engaged in trade or commerce for profit other than in connection with soliciting, which represents that the purchase or use of goods or services offered will benefit, in whole or in part, a charitable organization or charitable purpose.

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

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

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

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

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

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

(a) An oral or written request.

(b) An announcement to the news media or by radio, television, telephone, telegraph or other transmission of images or

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information concerning the request for contributions by or for a charitable organization or charitable purpose.

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

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

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

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

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

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

History: 1991 a. 278, 315; 1999 a. 9.

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

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

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

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

2g. Submits to the department an annual financial report for the most recently completed fiscal year of the charitable organization, if the charitable organization received contributions in excess of $5,000 but not more than $100,000 during its most recently completed fiscal year.

2r. Submits to the department an audited financial statement for the most recently completed fiscal year of the charitable organization, if the charitable organization received contributions in excess of $100,000 during its most recently completed fiscal year.

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

(c) The department shall issue a certificate of registration to each charitable organization that is registered under this subsection. Renewal applications shall be submitted to the department, on a form provided by the department, on or before the expiration date specified in s. 440.08 (2) (a) and shall include a registration statement that complies with sub. (2) and the renewal fee determined by the department under s. 440.03 (9) (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) Any other information required by the department.

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

1. A balance sheet.

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

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

4. Other financial information that the department requires.

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

(b) Except as provided in rules promulgated under sub. (8), if a charitable organization received contributions in excess of $400,000 during its most recently completed fiscal year, the charitable organization shall file with the department, in lieu of a report under par. (a), an audited financial statement for the charitable organization's most recently completed fiscal year, prepared in accordance with generally accepted accounting principles, and the opinion of an independent certified public accountant on the financial statement. The audited financial statement shall be filed within 6 months after the end of that fiscal year.

(bm) Except as provided in rules promulgated under sub. (8), if a charitable organization received contributions in excess of $200,000 but less than $400,000 during its most recently completed fiscal year, the charitable organization shall file with the department, in lieu of a report under par. (a), a financial statement for the charitable organization's most recently completed fiscal year, prepared in accordance with generally accepted accounting principles, and a review of the financial statement by an independent certified public accountant. The financial statement shall be filed within 6 months after the end of that fiscal year.

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

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

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

1. A person that is exempt from filing a federal annual information return under section 6033 (a) (2) (A) (i) and (iii) and (C) (i) of the internal revenue code [section 6033 (a) (3) (A) (i) and (iii) and (C) (i) of the internal revenue code].

NOTE: The correct cross−reference is shown in brackets. Corrective legislation is pending.

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

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

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

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

5. A nonprofit, postsecondary educational institution accredited by a regional accrediting agency or association approved under 20 USC 1099b, or an educational institution and its authorized charitable foundations which solicit contributions only from its students and their families, alumni, faculty, trustees, corporations, foundations and patients.

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

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

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

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

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

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

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

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

(8) CONTRIBUTION LIMITS. The department may promulgate rules that adjust the threshold amounts in subs. (3) (a), (b), (bm), and (c) and (5) (a) 3. and (b) to account for inflation.

History: 1991 a. 278; 1995 a. 27, 277; 2007 a. 20, 213.

Cross−reference: See also ch. SPS 5, Wis. adm. code.

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

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

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

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

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

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

(c) The department shall issue a certificate of registration to each fund−raising counsel that is registered under this subsection. Renewal applications shall be submitted to the department, on a form provided by the department, on or before the date specified in s. 440.08 (2) (a) and shall include the renewal fee determined by the department under s. 440.03 (9) (a) and evidence satisfactory to the department that the fund−raising counsel maintains a bond that is approved under sub. (2).

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

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

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

(4) ACCOUNTS; DEPOSITS; RECORD KEEPING. (a) Within 90 days after services under a contract required under sub. (3) are completed, and on the anniversary of the signing of a contract lasting

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more than one year, the fund−raising counsel shall account in writing to the charitable organization with which the fund−raising counsel has contracted for all contributions received and expenses incurred under the contract. The charitable organization shall keep the accounting for at least 3 years after the date on which services under the contract are completed and make it available to the department upon request.

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

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

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

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

(5) DEPARTMENT DISCLOSURE. The department shall not disclose information under sub. (4) (c) 1. except to the extent necessary for investigative or law enforcement purposes and except that the department may, if requested under s. 49.22 (2m), disclose information regarding the name, address or employer of or financial information related to an individual to the department of children and families or a county child support agency under s. 59.53 (5).

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

History: 1991 a. 278; 1995 a. 27; 1997 a. 191; 2007 a. 20.

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

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

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

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

3. Pays to the department a $50 registration fee, except that no registration fee is required under this subdivision for an individual who is eligible for the veterans fee waiver program under s. 45.44.

(c) The department shall issue a certificate of registration to each professional fund−raiser that is registered under this subsection. Renewal applications shall be submitted to the department, on a form provided by the department, on or before the date specified in s. 440.08 (2) (a) and shall include the renewal fee determined by the department under s. 440.03 (9) (a) and evidence satisfactory to the department that the professional fund−raiser maintains a bond that is approved under sub. (2).

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

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

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

(a) A copy of the contract described in sub. (4).

(b) The projected period during which the soliciting will take place.

(c) The location and telephone number from which the soliciting will be conducted.

(d) The name and residence address of each person responsible for directing and supervising the conduct of services under the contract described in sub. (4).

(e) A statement of whether the professional fund−raiser will at any time have custody of contributions.

(f) A full and fair description of the charitable purpose for which solicitations will be made.

(4) CONTRACT. (a) A professional fund−raiser and a charitable organization that is required to be registered under s. 440.42 (1) shall enter into a written contract that clearly states the respective obligations of the professional fund−raiser and the charitable organization and states the amount of gross revenue, raised under the contract, that the charitable organization will receive. The amount of the gross revenue that the charitable organization will receive shall be expressed as a fixed percentage of the gross revenue or as an estimated percentage of the gross revenue, as provided in pars. (b) to (d).

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

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

(d) The estimated or fixed percentage of the gross revenue that the charitable organization will receive excludes any amount

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which the charitable organization is to pay under the contract as expenses, including the cost of merchandise or services sold or events staged.

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

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

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

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

1. The name and, if known to the professional fund−raiser, the address of each person contributing and the date and amount of the contribution.

2. The name and residence address of each employee, agent or other person involved in the solicitation.

3. A record of all contributions that are at any time in the custody of the professional fund−raiser.

4. A record of all expenses incurred by the professional fund−raiser which the charitable organization is required to pay.

5. A record of the location and account number of each financial institution account in which the professional fund−raiser deposits contributions.

(b) If under a contract described in sub. (4) the professional fund−raiser sells tickets to an event and represents that the tickets will be donated to an organization for use by others, the professional fund−raiser shall retain for the period specified in par. (a) all of the following:

1. The name and address of the donors and the number of tickets donated by each donor.

2. The name and address of the organization receiving donated tickets and the number of donated tickets received by the organization.

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

(10) NONDISCLOSURE. The department may not disclose information under sub. (9) (a) 1. to any person except to the extent necessary for investigative or law enforcement purposes and except that the department may, if requested under s. 49.22 (2m), disclose information regarding the name, address or employer of or financial information related to an individual to the department of children and families or a county child support agency under s. 59.53 (5).

History: 1991 a. 278, 315; 1995 a. 27; 1997 a. 191; 2007 a. 20; 2011 a. 209.

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

History: 1991 a. 278.

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

(a) The name and location of the charitable organization.

(b) That a financial statement of the charitable organization disclosing assets, liabilities, fund balances, revenue and expenses for the preceding fiscal year will be provided to the person upon request.

(c) A clear description of the primary charitable purpose for which the solicitation is made.

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

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

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

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

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

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

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

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

History: 1991 a. 278, 315.

Cross−reference: See also ch. SPS 5, Wis. adm. code.

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

(a) Use an unfair or deceptive act or practice.

(b) Imply that a contribution is for or on behalf of a charitable organization or use any emblem, device or printed matter belonging to or associated with a charitable organization without first being authorized in writing to do so by the charitable organization.

(c) Use a name, symbol or statement so closely related or similar to that used by another charitable organization that the use of the name, symbol or statement would tend to confuse or mislead a person being solicited.

(d) Represent or lead anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of the solicitation or charitable sales promotion will be used for charitable purposes if that is not the fact.

(e) Lead anyone in any manner to believe that another person sponsors, endorses or approves a solicitation or charitable sales promotion if the other person has not sponsored, endorsed or approved the solicitation or charitable sales promotion in writing.

(f) Use the fact of registration to lead any person to believe that the registration constitutes an endorsement or approval by the state.

(g) Represent directly or by implication that a charitable organization will receive a fixed or estimated percentage of the gross revenue raised greater than that established under s. 440.44 (4).

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

History: 1991 a. 278.

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

(2) FISCAL RECORDS; INSPECTION; RETENTION. All charitable organizations, fund−raising counsels, professional fund−raisers and unpaid solicitors shall keep true records concerning activities regulated by this subchapter in a form that will enable them accurately to provide the information required by this subchapter. Upon demand, those records shall be made available to the department for inspection and copying. The records shall be retained by the charitable organization, fund−raising counsel, professional fund−raiser or unpaid solicitor for at least 3 years after the end of the fiscal year to which they relate.

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

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

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

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

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

History: 1991 a. 278; 1995 a. 27.

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

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

History: 1991 a. 278.

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

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

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

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

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

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b. Knowingly conceals relevant information.

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

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

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

History: 1991 a. 278.

SUBCHAPTER V

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. A license issued under this section is permanent unless suspended or revoked by the department.

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

SUBCHAPTER VI

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).

(4e) "Barber" has the meaning specified in s. 454.20 (1).

(4m) "Barbering" has the meaning specified in s. 454.20 (2).

(4s) "Barbering manager" has the meaning specified in s. 454.20 (3).

(5e) "Cosmetologist" has the meaning specified in s. 454.01 (7e).

(5m) "Cosmetology" has the meaning specified in s. 454.01 (7m).

(5s) "Cosmetology manager" has the meaning specified in s. 454.01 (7s).

(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).

(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, 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; 2011 a. 190.

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

(1) Schools regulated or approved by the technical college system board.

(2) Schools operated by the department of health services or the department of corrections.

History: 1987 a. 265; 1989 a. 31, 107; 1993 a. 399; 1995 a. 27 ss. 6587, 9126 (19); 2007 a. 20 s. 9121 (6) (a).

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, cosmetology, aesthetics, electrology, or manicuring, as appropriate, 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 any similar title unless the school holds a current school of barbering license issued by the department.

(cm) No school may use the title "school of cosmetology" or any similar title unless the school holds a current school of 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.

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

(2) APPLICATIONS; LICENSE PERIOD; CHANGE OF OWNERSHIP. (a) An application for initial licensure or renewal or reinstatement of a license under this section shall be submitted to the department on a form provided by the department and shall be accompanied by the applicable fee determined by the department under s. 440.03 (9) (a). Each application shall be accompanied by a surety bond acceptable to the department in the minimum sum of $25,000 for each location.

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

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

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

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

(3) SCHOOL LICENSES. (ag) *School of barbering.* The department shall issue a school of barbering license to each school that meets all of 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 of at least 1,000 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 barbering managers, requires as a prerequisite to completion of that course of instruction the completion of at least 150 training hours of theoretical instruction.

4. If the school offers a course of theoretical instruction for apprentices under s. 454.26, requires as a prerequisite to completion of the course of instruction for those apprentices the completion of at least 288 training hours in not less than 9 weeks and not more than 2 years.

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

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

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

2. Requires as a prerequisite to graduation completion of a course of instruction in 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 cosmetology managers, requires as a prerequisite to completion of that course of instruction the completion of at least 150 training hours of theoretical instruction.

4. If the school offers a course of theoretical instruction for apprentices under s. 454.10, requires as a prerequisite to completion of the course of instruction for those apprentices the completion of at least 288 training hours in not less than 9 weeks and not more than 2 years.

4m. If the school offers a course of instruction in barbering, the course of instruction satisfies the requirements under par. (ag) 2.

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 cosmetology established in rules promulgated under subs. (2) (e) and (5) (b) 1. 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) 1. The cosmetology examining board shall promulgate rules prescribing the subjects required to be included in courses of instruction at schools of cosmetology and specialty schools and establishing minimum standards for courses of instruction and instructional materials and equipment at schools of cosmetology and specialty schools.

2. The department shall promulgate rules prescribing the subjects required to be included in courses of instruction at schools of barbering and establishing minimum standards for courses of instruction and instructional materials and equipment at schools of barbering.

History: 1987 a. 265; 1991 a. 39; 2007 a. 20; 2011 a. 190.
Cross−reference: See also chs. SPS 60, 61, 62, and 65, and Wis. adm. code.

440.63 Persons providing practical instruction in schools. (1) INSTRUCTOR CERTIFICATION REQUIRED. (a) No person may provide practical instruction in barbering unless the person holds a current barbering instructor or cosmetology instructor certificate issued by the department.

(am) No person may provide practical instruction in cosmetology unless the person holds a current cosmetology instructor certificate issued by the department.

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

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

(d) No person may provide practical instruction in manicuring unless the person holds a current manicuring instructor or cosmetology 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 initial credential fee determined by the department under s. 440.03 (9) (a). Renewal applications shall be submitted to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include the applicable renewal fee determined by the department under s. 440.03 (9) (a), and the applicable penalty for late renewal under s. 440.08 (3) if the application is submitted late.

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

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

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

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 instructor.

(am) *Cosmetology instructor certification.* The department shall issue a cosmetology instructor certificate to each person who meets all of the following requirements:

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

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

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

History: 1987 a. 265; 1989 a. 31; 1991 a. 39; 2007 a. 20; 2011 a. 190.
Cross−reference: See also ch. SPS 65, Wis. adm. code.

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 cosmetology manager license issued by the cosmetology examining board or a current 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 cosmetology manager license issued by the cosmetology 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 cosmetology manager license issued by the cosmetology examining board

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or a current cosmetology instructor or manicuring instructor certificate issued by the department.

History: 1987 a. 265; 2011 a. 190.

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 department or cosmetology examining board, as appropriate.

(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; 2011 a. 190.

Cross−reference: See also chs. SPS 60, 61, 62, and 65, Wis. adm. code.

SUBCHAPTER VII

CREMATORY AUTHORITIES

440.70 Definitions. As used in this subchapter:

(1) "Authorization form" means a form specified in s. 440.73.

(3) "Business entity" has the meaning given in s. 452.01 (3j).

(4) "Columbarium" means a building, structure, or part of a building or structure that is used or intended to be used for the inurnment of cremated remains.

(5) "Cremated remains" means human remains recovered from the cremation of a human body or body part and the residue of a container or foreign materials that were cremated with the body or body part.

(6) "Cremation" means the process of using heat to reduce human remains to bone fragments and includes processing or pulverizing the bone fragments.

(7) "Cremation chamber" means an enclosed space within which cremation takes place.

(8) "Crematory" means a building or portion of a building within which a cremation chamber is located.

(9) "Crematory authority" means a person who owns or operates a crematory.

(10) "Funeral director" has the meaning given in s. 445.01 (5).

(11) "Funeral establishment" has the meaning given in s. 445.01 (6).

(12) "Human remains" means the body or part of the body of a deceased individual.

(14) "Niche" means a space in a columbarium that is used or intended to be used for the inurnment of cremated remains.

History: 2005 a. 31, 254.

440.71 Registration; renewal. **(1)** PROHIBITION. No person may cremate human remains unless the department has registered the person as a crematory authority under sub. (2).

(2) REGISTRATION. The department shall register a person as a crematory authority if the person does all of the following:

(a) Pays the initial credential fee determined by the department under s. 440.03 (9) (a).

(b) Submits an application on a form provided by the department that includes all of the following:

1. The name and address of the applicant or the business entity that the applicant represents.

2. The address of the crematory.

3. A description of the structure and equipment proposed to be used in operating the crematory.

4. Any other information that the department may require.

(3) RENEWAL. Renewal applications shall be submitted to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include the applicable renewal fee determined by the department under s. 440.03 (9) (a).

History: 2005 a. 31; 2007 a. 20.

440.73 Authorization forms. A person who is authorized to direct the cremation of the human remains of a decedent may do so only by completing a form that includes all of the following:

(1) The name of the decedent and the date and time of the decedent's death.

(2) The name of the person directing the cremation and his or her relationship to the decedent.

(3) A statement that the person directing the cremation has the authority to direct the cremation.

(4) A statement that the person directing the cremation has no reason to believe that the decedent's remains contain a device that may be hazardous or cause damage to the cremation chamber or an individual performing the cremation.

(5) The name of the funeral director, funeral establishment, or cemetery that the person directing the cremation authorizes to receive the cremated remains or, if alternative arrangements are made for receiving the cremated remains, a description of those arrangements.

(6) If known by the person directing the cremation, the manner in which the cremated remains are to be disposed.

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(7) An itemized list of valuables on the decedent's person that are to be removed prior to cremation and returned to the person directing the cremation.

(8) If a viewing or other services are planned, the date and time of the viewing or services.

(9) The signature of the person directing the cremation attesting to the accuracy of the representations contained on the form.

History: 2005 a. 31.

440.75 Liability of a person who directs the cremation of human remains. A person who directs the cremation of human remains is liable for damages resulting from authorizing the cremation of the human remains of a decedent.

History: 2005 a. 31.

440.76 Revocation of authorization. Before a cremation is performed, a person directing the cremation of human remains may cancel the cremation by providing the crematory authority with a written statement revoking the authorization form. A person who revokes an authorization form shall provide the crematory authority with written instructions regarding the final disposition of the human remains.

History: 2005 a. 31.

440.77 Delivery and acceptance of human remains. (1) RECEIPT FOR DELIVERY. A crematory authority that receives human remains from a person shall provide the person with a receipt that includes all of the following:

(a) The name of the decedent.

(b) The date and time that the human remains were delivered.

(c) A description of the type of casket or container in which the human remains were delivered.

(d) The name of the person who delivered the human remains and the name of the funeral establishment or other business entity, if any, with which the person is affiliated.

(e) The name of the person who received the human remains on behalf of the crematory authority and the name of the funeral establishment or other business entity, if any, with which the crematory authority is affiliated.

(f) The signature of the person who delivered the human remains.

(g) The signature of the person who received the human remains on behalf of the crematory authority.

(2) ACCEPTANCE OF HUMAN REMAINS. (a) A crematory authority may not refuse to accept delivery of human remains solely on the basis that the human remains have not been placed in a casket or have not been embalmed.

(b) A crematory authority may refuse to accept delivery of human remains if any of the following apply:

1. The casket or other container used for the human remains has evidence of leakage of bodily fluids.

2. The crematory authority has knowledge of a dispute regarding the cremation of the human remains, unless the crematory authority receives a copy of a court order or other documentation indicating that the dispute has been resolved.

3. The crematory authority has reason to believe that a representation of the person directing the cremation of human remains is not true.

4. The crematory authority has reason to believe that the human remains contain a device that may be hazardous or cause damage to the cremation chamber or an individual performing the cremation.

History: 2005 a. 31.

440.78 Cremation requirements. (1) DOCUMENTATION. A crematory authority may not cremate the human remains of a decedent unless the authority has received all of the following:

(a) A completed authorization form.

(b) A copy of the cremation permit issued under s. 979.10 (1) (a).

(c) If a report for final disposition of a human corpse is required under s. 69.18 (3), a copy of the report.

(2) HOLDING FACILITY. (a) Upon accepting delivery of human remains, a crematory authority shall place the human remains in a holding facility until they are cremated, except that, if the crematory authority obtains knowledge of a dispute regarding the cremation of the human remains, the crematory authority may, until the dispute is resolved, return the human remains to the person who delivered the human remains or the funeral establishment or other business entity with which that person is affiliated, neither of which may refuse to accept the human remains.

(b) A crematory authority shall restrict access to a holding facility to authorized personnel.

(3) CASKETS AND OTHER CONTAINERS. (a) A crematory authority may not require human remains to be placed in a casket before cremation or to be cremated in a casket.

(b) Unless a crematory authority obtains the prior written consent of the person directing the cremation, and except as provided in par. (c), a crematory authority shall cremate with human remains the casket or other container holding the human remains or destroy the casket or other container.

(c) A container may be used to hold human remains that are to be cremated only if the container is composed of readily combustible materials that are resistant to leakage and spillage, has the ability to be closed for complete covering of the human remains, is sufficiently rigid to provide ease in handling, and is able to protect the health and safety of crematory personnel.

(4) VIEWINGS OR OTHER SERVICES. A crematory authority may not cremate human remains before the date and time specified in an authorization form under s. 440.73 (8).

(5) SIMULTANEOUS CREMATION. A crematory authority may not simultaneously cremate the human remains of more than one decedent within the same cremation chamber unless the crematory authority receives the prior written consent of the person directing the cremation of each decedent.

(6) RESIDUE REMOVAL. Upon completion of each cremation, a crematory authority shall, insofar as practicable, remove all of the cremated remains from the cremation chamber.

(7) CONTAINERS FOR CREMATED REMAINS. A container may be used to hold cremated remains only if all of the following are satisfied:

(a) Except as provided in sub. (8), the container is a single container of sufficient size to hold the cremated remains.

(b) The container may be closed in a manner that prevents the entrance of foreign materials and prevents leakage or spillage of the cremated remains.

(8) EXCESS REMAINS; ADDITIONAL CONTAINER. If cremated remains that a crematory authority recovers from a cremation chamber do not fit within the container that the person who directed the cremation has selected, the crematory authority shall return the remainder of the human remains in a separate container to the person who directed the cremation or to that person's designee.

(9) IDENTIFICATION SYSTEM. A crematory authority shall maintain an identification system that ensures the identity of human remains throughout all phases of the cremation process.

History: 2005 a. 31.

440.79 Deliveries of cremated remains. A crematory authority may deliver cremated remains to another person only by making the delivery in person or by using a delivery service that has a system for tracking the delivery. The crematory authority shall obtain a signed receipt from the person to whom the cremated remains are delivered. The crematory authority shall ensure that the receipt includes all of the following:

(1) The name of the decedent.

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(2) The date and time that the cremated remains were delivered.

(3) The name and signature of the person to whom the cremated remains were delivered and the name of the funeral establishment or other business entity, if any, with which the person is affiliated.

(4) The name and signature of the person who delivered the cremated remains on behalf of the crematory authority.

History: 2005 a. 31, 254.

440.80 Disposition of cremated remains. (1) RESPONSIBLE PARTY. (a) Except as provided in par. (b), the person directing the cremation is responsible for determining the manner in which cremated remains are disposed.

(b) If the person directing the cremation fails to determine the manner in which cremated remains are disposed, the crematory authority shall, no sooner than 30 days after cremation, deliver the cremated remains to the person who delivered the human remains to the crematory authority for cremation or the funeral establishment or other business entity with which that person is affiliated, neither of which may refuse to accept the cremated remains. No sooner than 60 days after the cremated remains are delivered under this paragraph, the person to whom they are delivered may determine the manner in which the cremated remains are disposed and shall make a written record of any determination that is made.

(c) The person directing the cremation or the decedent's estate, or both, are liable for all reasonable expenses incurred in delivering and disposing of cremated remains under par. (b).

(2) MANNER OF DISPOSITION. A person may dispose of cremated remains only in one of the following manners:

(a) Placing the remains in a grave, niche, or crypt.

(b) Disposing of the remains in any other lawful manner, but only if the remains are reduced to a particle size of one−eighth inch or less.

(3) COMMINGLING. Without the prior written consent of each person directing the cremation, no person may place cremated remains of more than one individual in the same container.

(4) PROHIBITED SALES. A crematory authority may not do any of the following:

(a) Sell any material or device, including a prosthetic or medical device of a decedent, that is obtained from cremating the human remains of the decedent.

(b) Resell any casket or other container that has been used for cremating human remains.

History: 2005 a. 31.

440.81 Records. (1) A crematory authority shall maintain a permanent record of each cremation at its place of business consisting of the name of the decedent, the date of the cremation, and a description of the manner in which the cremated remains are disposed.

(2) A crematory authority shall maintain as permanent records the documentation specified in s. 440.78 (1) and copies of receipts under ss. 440.77 (1) and 440.79.

History: 2005 a. 31.

440.82 Exemptions from liability. (1) Except as provided in sub. (2), a crematory authority is immune from civil liability for damages resulting from cremating human remains, including damages to prosthetic or medical devices or valuables of the decedent, if the authority has complied with the requirements of this subchapter.

(2) A crematory authority is liable for damages resulting from the authority's intentional misconduct, negligent conduct, or failure to return valuables specified on an authorization form under s. 440.73 (7).

History: 2005 a. 31.

440.83 Electronic transmission permitted. Any statement required to be in writing under s. 440.76, 440.78 (3) (b) or (5), or 440.80 (3) may be transmitted by facsimile.

History: 2005 a. 31.

440.84 Rules. The department may promulgate rules interpreting or administering the requirements of this subchapter.

History: 2005 a. 31.

440.85 Discipline. (1) Subject to the rules promulgated under s. 440.03 (1), the department may make investigations, including inspections, or conduct hearings to determine whether a violation of this subchapter or any rule promulgated under this subchapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the department may reprimand an individual registered under this subchapter or deny, limit, suspend, or revoke a registration under this subchapter if the department finds that the applicant or individual has done any of the following:

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

(b) Engaged in conduct while practicing as a crematory authority that evidences a lack of knowledge or ability to apply professional principles or skills.

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

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

(e) Advertised, practiced, or attempted to practice as a crematory authority under another person's name.

(f) Violated this subchapter or a rule promulgated under this subchapter.

History: 2005 a. 31.

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

(2) In addition to or in lieu of the penalties under sub. (1) and the remedies under s. 440.85 (2), any person who violates this subchapter or a rule promulgated under this subchapter may be required to forfeit not more than $1,000 for each violation. Each day of continued violation constitutes a separate violation.

History: 2005 a. 31.

440.87 Exceptions. This subchapter does not apply to a person who is performing his or her duties as an officer of a public institution, medical school, medical college, county medical society, anatomical association, or accredited college of embalming, or to a person acting in accordance with a statute prescribing the conditions under which donated or indigent dead human bodies are held subject for anatomical study, or to a person who is acting according to the burial customs or rites of a religious sect to which the person belongs or subscribes.

History: 2005 a. 31.

SUBCHAPTER VIII

SUBSTANCE ABUSE COUNSELORS, CLINICAL SUPERVISORS, AND PREVENTION SPECIALISTS

440.88 Substance abuse counselors, clinical supervisors, and prevention specialists. (1) DEFINITIONS. In this subchapter:

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(a) "Clinical supervisor" means a clinical supervisor−in−training, an intermediate clinical supervisor, or an independent clinical supervisor.

(am) "Prevention specialist" means a prevention specialist−in−training or a prevention specialist.

(b) "Substance abuse counselor" means a substance abuse counselor−in−training, a substance abuse counselor, or a clinical substance abuse counselor.

(2) CERTIFICATION. Except as provided in sub. (3m) and s. 440.12 or 440.13, the department shall certify as a substance abuse counselor, a clinical supervisor, or a prevention specialist any individual who satisfies the applicable conditions in sub. (3) and who has presented evidence satisfactory to the department that applicable certification standards and qualification of the department, as established by rule, have been met.

(3) CERTIFICATION; STANDARDS AND QUALIFICATIONS. (a) Subject to pars. (b) and (c) and except as provided in sub. (3m), the department shall promulgate rules that establish minimum standards and qualifications for the certification of all of the following, including substance abuse counselors and clinical supervisors described under s. HFS 75.02 (11) and (84), Wis. Adm. Code, in effect on December 15, 2006:

1. Substance abuse counselors−in−training.
2. Substance abuse counselors.
3. Clinical substance abuse counselors.
4m. Clinical supervisors−in−training.
5. Intermediate clinical supervisors.
6. Independent clinical supervisors.
7. Prevention specialists−in−training.
8. Prevention specialists.

(b) Rules promulgated under par. (a) shall include standards based on demonstrated requisite competency, knowledge, skills, and attitudes of professional practice that are culturally competent and evidence−based.

(c) Before the department may promulgate rules under par. (a), the department shall appoint a certification review committee under s. 227.13 and shall consult with the certification review committee on the proposed rules.

(3m) EXCEPTION. This section does not apply to a physician, as defined in s. 448.01 (5), a clinical social worker, as defined in s. 457.01 (1r), or a licensed psychologist, as defined in s. 455.01 (4), who practices as a substance abuse clinical supervisor or provides substance abuse counseling, treatment, or prevention services within the scope of his or her licensure.

(4) APPLICATIONS; CERTIFICATION PERIOD. An application for certification as a substance abuse counselor, clinical supervisor, or prevention specialist under this section shall be made on a form provided by the department and filed with the department and shall be accompanied by the initial credential fee determined by the department under s. 440.03 (9) (a). The renewal date for certification as a substance abuse counselor, clinical supervisor, or prevention specialist is specified under s. 440.08 (2) (a) and the renewal fee for such certifications is determined by the department under s. 440.03 (9) (a). Renewal of certification as a substance abuse counselor−in−training, a clinical supervisor−in−training, or a prevention specialist−in−training may be made only twice.

(5) CERTIFICATION REQUIRED. Except as provided in sub. (3m) and s. 257.03, no person may represent himself or herself to the public as a substance abuse counselor, clinical supervisor, or prevention specialist or a certified substance abuse counselor, clinical supervisor, or prevention specialist or use in connection with his or her name a title or description that conveys the impression that he or she is a substance abuse counselor, clinical supervisor, or prevention specialist or a certified substance abuse counselor, clinical supervisor, or prevention specialist unless he or she is so certified under sub. (2).

(6) REVOCATION, DENIAL, SUSPENSION, OR LIMITATION OF CERTIFICATION. The department may, after a hearing held in conformity with chapter 227, revoke, deny, suspend, or limit under this subchapter the certification of any substance abuse counselor, clinical supervisor, or prevention specialist or reprimand the substance abuse counselor, clinical supervisor, or prevention specialist, for practice of fraud or deceit in obtaining the certification or any unprofessional conduct, incompetence, or professional negligence.

(7) RECIPROCAL CERTIFICATION. The department may, upon application and payment of the required fee, issue certification as a substance abuse counselor, clinical supervisor, or prevention specialist to an individual who holds a similar unexpired certification issued to the individual by another state for which the requirements for certification are of a standard that is not lower than that specified in this subchapter.

(8) CERTIFICATION OTHER THAN BY DEPARTMENT PROHIBITED. No entity other than the department may certify substance abuse counselors, clinical supervisors, or prevention specialists.

(9) CONTINUING EDUCATION. The department may do all of the following:

(a) Establish the minimum number of hours of continuing education required for renewal of certification under this section and the topic areas that the continuing education must cover.

(b) Require continuing education as part of any disciplinary process for an individual.

(10) CONTINUING EDUCATION COURSE APPROVAL. The department shall establish the criteria for the approval of continuing education programs and courses required for renewal of certification of a substance abuse counselor, clinical supervisor, or prevention specialist and the criteria for the approval of the sponsors and cosponsors of those continuing education programs and courses. The department shall approve continuing education programs and courses in accordance with the criteria established under this subsection.

(11) SCOPE OF PRACTICE. The department shall promulgate rules establishing minimum standards for the practice of substance abuse counseling, supervision, and prevention.

History: 2005 a. 25; 2005 a. 96 s. 4m; 2005 a. 254 s. 37; 2005 a. 407; 2007 a. 20, 99; 2009 a. 42.

Cross−reference: See also chs. SPS 160, 161, 162, 163, 164, 165, 166, 167, and 168, Wis. adm. code.

SUBCHAPTER IX

CEMETERY AUTHORITIES, SALESPERSONS AND PRENEED SELLERS

440.90 Definitions. In this subchapter:

(1b) "Board" means the cemetery board.

(1c) "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).

(4m) "Licensed cemetery authority" means a cemetery authority that is licensed under s. 440.91 (1).

(4r) "Licensee" means a person licensed under this subchapter.

(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).

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(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; 2005 a. 25.

440.905 General duties and powers of board. (1) In addition to the other duties and powers of the board under this subchapter, the board shall advise the secretary of safety and professional services on matters relating to cemeteries, to this chapter, or to the board.

(2) The board has rule−making authority and may promulgate rules relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers. The board may determine, by rule, a fee under s. 440.05 (1) (a) and under s. 440.08 (2) (a) 21. that is sufficient to fund the board's operating costs.

History: 2005 a. 25; 2011 a. 32.

Cross−reference: See also ch. CB 1, Wis. adm. code.

440.91 Cemetery authorities and cemetery salespersons. (1) (a) Any cemetery authority that operates a cemetery that is 5 acres or more in size, that sells 20 or more cemetery lots or mausoleum spaces at a cemetery during a calendar year, or that has $100,000 or more in trust fund accounts for a cemetery shall apply to the board for a license for that cemetery. A cemetery authority that operates more than one cemetery shall apply for a separate license for each cemetery that is 5 acres or more in size and for each cemetery at which it sells 20 or more burial spaces or at which it has $100,000 or more in trust fund accounts.

(b) The board shall grant a license to a cemetery authority if all of the following are satisfied:

1. The cemetery authority submits an application for the license to the board on a form provided by the board. The application shall require the cemetery authority to provide the names of the officers of the cemetery authority and to identify a business representative who is primarily responsible for the cemetery authority's compliance with subch. II of ch. 157 and this subchapter.

2. The cemetery authority pays the initial credential fee determined by the department under s. 440.03 (9) (a).

(c) 1. The renewal dates for licenses granted under par. (b) are specified in s. 440.08 (2) (a) and the renewal fees for such licenses are determined by the department under s. 440.03 (9) (a), except that a licensed cemetery authority is not required to renew its license if the cemetery authority sells less than 20 cemetery lots or mausoleum spaces at a cemetery during a calendar year, or that has less than $100,000 in trust fund accounts for a cemetery.

2. A licensed cemetery authority that is not required to renew its license under subd. 1. shall renew the license if, during a period of 2 consecutive calendar years that is subsequent to the period specified in subd. 1., the cemetery authority sells 20 or more cemetery lots or mausoleum spaces for a cemetery or has $100,000 or more in trust fund accounts for a cemetery.

(1m) (a) Except as provided in sub. (6m), any cemetery authority that operates a cemetery that is less than 5 acres in size, that sells fewer than 20 cemetery lots or mausoleum spaces at a cemetery during a calendar year, or that has less than $100,000 in trust fund accounts for a cemetery shall register with the board. A cemetery authority that operates more than one cemetery shall submit a separate registration to the board for each cemetery that is less than 5 acres in size, that sells fewer than 20 cemetery lots or mausoleum spaces at a cemetery during a calendar year, or that has less than $100,000 in trust fund accounts.

(b) The board shall register a cemetery authority if all of the following are satisfied:

1. The cemetery authority submits an application for registration to the board on a form provided by the board. The application shall require the cemetery authority to provide the names and addresses of the officers of the cemetery authority and to identify a business representative who is primarily responsible for the cemetery authority's compliance with subch. II of ch. 157 and this subchapter.

2. The cemetery authority pays a $10 fee to the board.

(c) The renewal date and renewal fee for a registration granted under par. (b) are specified in s. 440.08 (2).

(2) Except as provided in sub. (10), every individual who sells or solicits the sale of, or that expects to sell or solicit the sale of, 20 or more cemetery lots or mausoleum spaces per year during 2 consecutive calendar years shall be licensed by the board. An individual may not be licensed as a cemetery salesperson except upon the written request of a cemetery authority and the payment of the initial credential fee determined by the department under s. 440.03 (9) (a). The cemetery authority shall certify in writing to the board that the individual is competent to act as a cemetery salesperson. An applicant for licensure as a cemetery salesperson shall furnish to the board, in such form as the board prescribes, all of the following information:

(a) The name and address of the applicant.

(b) Educational qualifications.

(c) Prior occupations.

(d) Any other information which the department may reasonably require to enable it to determine the competency of the salesperson to transact the business of a cemetery salesperson in a manner which safeguards the interest of the public.

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

(4) Renewal applications shall be submitted to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include the applicable renewal fee determined by the department under s. 440.03 (9) (a).

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

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

(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 licensed under sub. (2).

(9) No cemetery authority or cemetery salesperson licensed 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 cemetery

merchandise or a burial space to any person who is not licensed under sub. (1) or (2) or who is not regularly and lawfully engaged in the sale of cemetery merchandise or burial spaces in another state or territory of the United States or a foreign country.

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

History: 1989 a. 307 ss. 75, 80 to 83, 91; 1991 a. 39, 269; 2005 a. 25; 2007 a. 20, 174; 2009 a. 180; 2011 a. 146.

Cross−reference: See also chs. CB 1 and 2, Wis. adm. code.

440.92 Cemetery preneed sellers. (1) LICENSURE. (a) Except as provided in subs. (4), (9) (a) and (10), every individual who sells or solicits the sale of cemetery merchandise or an undeveloped space under a preneed sales contract and, if the individual is employed by or acting as an agent for a cemetery authority or any other person, that cemetery authority or other person is also required to be licensed under this subsection.

(b) The board shall issue a certificate of licensure 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 initial credential fee determined by the department under s. 440.03 (9) (a).

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.

(bm) If a cemetery authority that is licensed under this subsection notifies the board that it proposes to take an action specified in s. 157.08 (2) (b) and the board does not object to the action under s. 157.08 (2) (b), the board shall revoke the license and require the cemetery authority to reapply for a license under this subsection.

(c) Renewal applications shall be submitted to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include the applicable renewal fee determined by the department under s. 440.03 (9) (a).

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

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 safety and professional services 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 SAFETY AND PROFESSIONAL SERVICES FOR APPROVAL. THE SELLER IS RESPONSIBLE FOR ALL

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COSTS REQUIRED TO OBTAIN APPROVAL OF THE PLANS BY THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES, COMPLETE THE CONSTRUCTION, AND OBTAIN CERTIFICATION OF THE CONSTRUCTION BY THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The preneed seller files with the department a bond furnished by a surety company authorized to do business in this state or files with the department and maintains an irrevocable letter of credit from a financial institution 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 licensed 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) 1. 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 licensed 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 licensed under sub. (1) shall file an annual report with the board. The report shall be made on a form prescribed and furnished by the board. The report shall be made on a calendar−year basis unless the board, by rule, provides for other reporting periods. The report is due on or before the 60th day after the last day of the reporting period.

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

1. If the preneed seller is a corporation that is required to file a report under s. 180.1622 or 181.1622, a copy of that report and the name, residence address and business address of each shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the corporation.

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

(c) A preneed seller who is the trustee of any trust fund under s. 445.125 (1) 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 board are confidential and are not available for inspection or copying under s. 19.35 (1). This paragraph does not apply to any information regarding the name, address or employer of or financial information related to an individual that is requested under s. 49.22 (2m) by the department of children and families or a county child support agency under s. 59.53 (5).

(e) The board 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 board may promulgate rules to establish longer time periods for maintaining records under this paragraph.

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

(j) The board may audit, at reasonable times and frequency, the records, trust funds and accounts of any preneed seller licensed 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 board 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 board. Upon application, the board 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 board 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 board 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 board shall compile and keep a current list of the names and addresses of all warehouses approved under this subsection and shall make the list available for public inspection during the times specified in s. 230.35 (4) (f).

(9) EXEMPTIONS; CERTIFICATION OF COMPLIANCE OF CEMETERY AFFILIATED WITH RELIGIOUS SOCIETY. (a) If the cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187 or that religious society files an annual certification with the department as provided in this subsection, neither the cemetery authority nor any employee of the cemetery is required

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to be licensed as a cemetery preneed seller under sub. (1) during the period for which the certification is effective.

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

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

2. The name, address and social security number of each employee 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 employee 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 employee 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 employee 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 employee specified under par. (b) 2. or the cemetery authority to fully comply with sub. (2), (3) (a) or (b) or (5) during the 12−month period for which such compliance has been certified under this subsection.

(10) EXEMPTIONS; CERTAIN CEMETERIES. This section does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) or registered under s. 440.91 (1m).

History: 1989 a. 307; 1991 a. 16, 32, 39, 269; 1993 a. 16; 1995 a. 27 ss. 6605, 9116 (5); 1995 a. 295; 1997 a. 79, 191; 1999 a. 9; 2005 a. 25, 213, 254; 2007 a. 20, 174; 2011 a. 32.

Cross−reference: See also chs. CB 1, 2, and 3, Wis. adm. code.

440.93 Disciplinary actions and proceedings. (1) The board may reprimand a licensee or deny, limit, suspend, or revoke a certificate of licensure of a cemetery authority, cemetery salesperson, or preneed seller if it finds that the applicant or licensee, or, if the applicant or licensee is an association, partnership, limited liability company, or corporation, any officer, director, trustee, member, or shareholder who beneficially owns, holds, or has the power to vote 5% or more of any class of security issued by the applicant or licensee, 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. This subsection does not apply to a limitation or suspension under s. 440.13 (2) (a).

History: 1989 a. 307; 1993 a. 112; 1997 a. 191; 2005 a. 25.

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

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

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

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

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

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

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

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

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

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

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

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

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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 safety and professional services 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; 2011 a. 32.

440.947 Disclosures and representations for certain sales. (1) In this section:

(a) "Cash advance item" means personal property or a service that is obtained by a person from a 3rd party and that is paid for by the person on behalf of, and subject to reimbursement from, a buyer of a casket, outer burial container or cemetery merchandise from the person. "Cash advance item" includes cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or vocalists, nurses, obituary notices, gratuities and death certificates.

(b) "Direct cremation service" means the disposition of human remains by cremation without any formal viewing, visitation or ceremony in which the body of the deceased is present.

(c) "Outer burial container" has the meaning given in s. 157.061 (11g).

(d) "Person" does not include a person issued a funeral director's license under ch. 445 or an operator of a funeral establishment, as defined in s. 445.01 (7).

(2) No person may sell or offer for sale a casket, outer burial container or cemetery merchandise unless the person has provided to the buyer, prior to the sale, a price list in a clearly legible and conspicuous format that includes each of the following:

(a) The name, address and telephone number of the person's place of business.

(b) The effective date of the price list.

(c) The price and a description of each type of casket, outer burial container and cemetery merchandise that the person usually offers for sale without special ordering. A description required under this paragraph shall enable a buyer to identify and understand the specific casket, outer burial container or cemetery merchandise that is offered for sale.

(d) If the person usually offers an outer burial container for sale without special ordering, a statement that is identical to the following: "State law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements."

(e) The price and a description of any direct cremation or burial service offered by the person and, if the person offers direct cremation service, a statement that is identical to the following: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers that we provide are .... [insert a description of the containers offered for direct cremation]."

(f) The price and a description of any service offered by the person for the use any facilities, equipment or staff related to a viewing, funeral ceremony, memorial service or graveside service.

(g) The amount and a description of any basic service fee that is charged in addition to any price described under pars. (c), (e) or (f).

(3) A person who sells a casket, outer burial container or cemetery merchandise shall, immediately after completing the sale, provide the buyer with a form in a clearly legible and conspicuous format that includes each of the following:

(a) The price and a description of the casket, outer burial container or cemetery merchandise.

(b) The price and a description of any service specified in sub. (2) (e) or (f) that is sold in addition to the casket, outer burial container or cemetery merchandise.

(c) The amount and a description of any basic service fee that is charged in addition to any price described under par. (a) or (b).

(d) A statement that the buyer may be charged only for the items that he or she has selected or that are required by law and a description and explanation of any items that he or she is required by law to purchase.

(e) A description of any charge for a cash advance item, including any commission, discount or rebate that the person receives for a cash advance item from the 3rd party from which the cash advance item is obtained and that the person does not pass on to the buyer.

(4) No person who sells a casket, outer burial container or cemetery merchandise may do any of the following:

(a) Provide inaccurate information regarding the information specified in sub. (2) (c), (e), (f) or (g) to a prospective buyer who contacts the person by telephone.

(b) Represent that state or local law requires a prospective buyer to purchase a casket for a direct cremation service.

(c) Misrepresent to a prospective buyer any requirement under federal, state or local law or under the rules of any cemetery, mausoleum or crematory relating to the use of a casket, outer burial container or cemetery merchandise.

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(d) Represent that any casket, outer burial container or cemetery merchandise will delay the natural decomposition of human remains for a long or indefinite period of time.

(e) Require a buyer to pay an additional fee or surcharge if the buyer purchases a casket, outer burial container or cemetery merchandise from a 3rd party.

(f) Alter a price specified in sub. (2) (c), (e), (f) or (g) based on the type of casket, outer burial container or cemetery merchandise purchased by a buyer.

(5) A person who sells a casket, outer burial container or cemetery merchandise shall retain a copy of the price list specified in sub. (2) (intro.) for at least one year after the date of its last distribution to a prospective buyer and shall retain a copy of each form that is provided to a buyer under sub. (3) (intro.) for at least one year after completion of a sale. A person required to retain a copy under this subsection shall make the copy available for inspection by the department upon request.

History: 1999 a. 9.

440.95 Penalties. **(1)** Any cemetery authority that is required to be licensed under s. 440.91 (1) and that knowingly fails to be licensed 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 440.947 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; 1999 a. 9; 2005 a. 25.

SUBCHAPTER X

INTERIOR DESIGNERS

Cross−reference: See also ch. SPS 130, Wis. adm. code.

440.96 Definitions. In this subchapter:

(1) "Interior design" means the design of interior spaces in conformity with public health, safety and welfare requirements, including the preparation of documents relating to space planning, finish materials, furnishings, fixtures and equipment and the preparation of documents relating to interior construction that does not substantially affect the mechanical or structural systems of a building. "Interior design" does not include services that constitute the practice of architecture or the practice of professional engineering.

(2) "Wisconsin registered interior designer" means a person registered as a Wisconsin registered interior designer under this subchapter.

History: 1995 a. 322.

440.961 Use of title. No person may use the title "Wisconsin registered interior designer", use any title or description that implies that he or she is a Wisconsin registered interior designer or represent himself or herself to be a Wisconsin registered interior designer unless the person is registered as a Wisconsin registered interior designer under this subchapter.

History: 1995 a. 322.

440.962 Registration requirements. The department shall register as a Wisconsin registered interior designer an individual who submits an application to the department on a form provided by the department and who satisfies one of the following requirements:

(1) The individual does all of the following:

(a) Submits to the department evidence satisfactory to the department of any of the following:

1. That he or she is a graduate of a 5−year interior design or architecture program and has at least one year of practical experience in interior design of a character satisfactory to the department.

2. That he or she is a graduate of a 4−year interior design or architecture program and has at least 2 years of practical experience in interior design of a character satisfactory to the department.

3. That he or she has completed at least 3 years of an interior design program and has at least 3 years of practical experience in interior design of a character satisfactory to the department.

4. That he or she is a graduate of a 2−year interior design program and has at least 4 years of practical experience in interior design of a character satisfactory to the department.

(b) Satisfies the applicable requirements under s. 440.964.

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

(d) Submits the names of at least 5 references, at least 3 of whom shall have personal knowledge of the applicant's interior designing experience.

(e) Meets any other requirements established by the department by rule.

(2) The individual is registered as an architect under s. 443.03 and submits evidence satisfactory to the department of all of the following:

(a) That he or she is a graduate of a 4−year architecture program.

(b) That he or she has at least 6 years of demonstrated practical experience in interior design of a character satisfactory to the department.

History: 1995 a. 322.

Cross−reference: See also ch. SPS 130, Wis. adm. code.

440.963 Use of title by firms, partnerships and corporations. **(1)** A firm, partnership or corporation may use the term "Wisconsin registered interior designer" or "Wisconsin registered interior designers", or may advertise or make representations that it provides the services of a Wisconsin registered interior designer, only if at least one principal, partner or officer who is in responsible charge of the interior design services provided by the firm, partnership or corporation is a Wisconsin registered interior designer.

(2) No firm, partnership or corporation may be relieved of responsibility for the conduct or acts of its agents, employees or officers by reason of its compliance with this subchapter, nor may any individual practicing interior design be relieved of responsi-

bility for interior designing services performed by reason of his or her employment or relationship with the firm, partnership or corporation.

History: 1995 a. 322.

440.964 Examinations. (1) Except as provided in s. 440.962 (2), no person may be registered as a Wisconsin registered interior designer under this subchapter unless he or she passes one of the following examinations:

(a) An interior design examination administered by a national organization that establishes standards for the interior design profession and that is recognized by the department.

(b) An interior design examination conducted or approved by the department under sub. (2) that is substantially equivalent to an examination specified in par. (a).

(2) Written or written and oral examinations under sub. (1) (b) shall be held at such time and place as the department determines. The scope of the examinations and the methods of procedure shall be prescribed by the department with special reference to the applicant's ability to design and supervise interior designing work, which shall promote the public welfare and ensure the safety of life, health and property. The examinations shall include questions which require applicants to demonstrate knowledge of the design needs of people with physical disabilities and of the relevant statutes and codes. Such questions shall be developed by the department in consultation with other appropriate state agencies.

(3) A candidate failing an examination given under sub. (2) may, upon application and payment of the required reexamination fee, be examined again by the department. No restrictions may be placed on the number of times an unsuccessful candidate may be reexamined, except that after failure of 3 reexaminations, the department may require a one−year waiting period before further reexamination.

History: 1995 a. 322.

440.965 Reciprocal registration. The department may, upon application and payment of the required fee, grant a permit to use the title "Wisconsin registered interior designer" to a person who is not a resident of and has no established place of business in this state, or who has recently become a resident of this state, if the person holds an unexpired certificate of similar registration issued to the person by the proper authority in any state or territory or possession of the United States or in any country in which the requirements for the registration of interior designers are of a standard not lower than specified in this subchapter.

History: 1995 a. 322.

440.966 Renewal; continuing education. (1) The renewal date for a certificate of registration issued under this subchapter is specified in s. 440.08 (2) (a), and the renewal fee for such certificate of registration is determined by the department under s. 440.03 (9) (a).

(2) A Wisconsin registered interior designer shall, at the time that he or she applies for renewal of a certificate of registration under sub. (1), submit proof of completion of continuing education requirements established by rules promulgated by the department.

History: 1995 a. 322; 2007 a. 20.

Cross−reference: See also ch. SPS 130, Wis. adm. code.

440.967 List of registered persons. The department shall prepare each year a list showing the names and business addresses of all persons registered as a Wisconsin registered interior designer under this subchapter. Upon request, the department shall provide a list prepared under this section to any person at cost.

History: 1995 a. 322.

440.968 Discipline; prohibited acts; penalties. (1) The department may reprimand a Wisconsin registered interior designer, or may limit, suspend or revoke the certificate of registration of a Wisconsin registered interior designer, who has done any of the following:

(a) Committed any fraud or deceit in obtaining or renewing a certificate of registration under this subchapter.

(b) Committed any gross negligence or misconduct, or acted in a grossly incompetent manner, in the practice of interior design as a Wisconsin registered interior designer.

(c) Violated this subchapter or a rule promulgated under this subchapter.

(d) Been convicted of a felony, subject to ss. 111.321, 111.322 and 111.335, or been adjudicated mentally incompetent by a court of competent jurisdiction, a certified copy of the record of conviction or adjudication of incompetency to be conclusive evidence of such conviction or incompetency.

(2) Any person who uses the title "Wisconsin registered interior designer" in this state and who is not registered in accordance with this subchapter, or any person presenting or attempting to use as his or her own the certificate of registration of another, or any person who falsely impersonates any other registrant of like or different name, or any person who attempts to use an expired or revoked certificate of registration, may be fined not less than $100 nor more than $500 or imprisoned for not more than 3 months or both.

(3) Any person may allege to the department that he or she believes a person registered under this subchapter has committed an act for which a reprimand or limitation, suspension or revocation of registration is authorized under sub. (1). Such allegations shall be in writing, and shall be sworn to by the person making them and shall be submitted to the department. The department may, on its own motion, make such charges.

(4) The department may reissue a certificate of registration to any person whose certificate has been revoked under sub. (1) if the person satisfies requirements for reissuance established by the department. The department may issue a new certificate of registration to replace any certificate revoked, lost, destroyed or mutilated, subject to the rules of the department and the payment of the required fee.

History: 1995 a. 322.

440.969 Change of name. No person who is registered as a Wisconsin registered interior designer under this subchapter may practice interior design in this state under any other given name or any other surname than that under which the person was originally registered to use a title in this or any other state if the department, after a hearing, finds that using a title under the changed name operates to unfairly compete with another practitioner or to mislead the public as to identity or to otherwise result in detriment to the profession or the public. This section does not apply to a change of name resulting from marriage or divorce.

History: 1995 a. 322.

SUBCHAPTER XI

HOME INSPECTORS

Cross−reference: See also chs. SPS 131, 132, 133, 134, and 135, Wis. adm. code.

440.97 Definitions. In this subchapter:

(1) "Client" means a person who contracts with a home inspector for a home inspection.

(2) "Compensation" means direct or indirect payment, including the expectation of payment whether or not actually received.

(3) "Dwelling unit" means a structure or that part of a structure that is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons who are maintaining a common household, to the exclusion of all others.

(4) "Home inspection" means the process by which a home inspector examines the observable systems and components of improvements to residential real property that are readily accessible.

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(5) "Home inspection report" means a written opinion of a home inspector concerning all of the following:

(a) The condition of the improvements to residential real property that contains not more than 4 dwelling units.

(b) The condition of mechanical and structural components of the improvements specified in par. (a).

(6) "Home inspector" means an individual who, for compensation, conducts a home inspection.

(7) "Technically exhaustive" means the extensive use of measurements, instruments, testing, calculations and other means to develop scientific or engineering findings, conclusions or recommendations.

History: 1997 a. 81.

440.971 Registry established. The department shall establish a registry of home inspectors.

History: 1997 a. 81.

440.9712 Registration required. (1) Except as provided in s. 440.9715, no individual may act as a home inspector, use the title "home inspector", use any title or description that implies that he or she is a home inspector or represent himself or herself to be a home inspector unless the individual is registered under this subchapter.

(1m) No business entity may provide home inspection services unless each of the home inspectors employed by the business entity is registered under this subchapter.

(2) No business entity may use, in connection with the name or signature of the business entity, the title "home inspectors" to describe the business entity's services, unless each of the home inspectors employed by the business entity is registered under this subchapter.

History: 1997 a. 81.

440.9715 Applicability. A registration is not required under this subchapter for any of the following:

(1) An individual who conducts a home inspection while lawfully practicing within the scope of a license, permit or certificate granted to that individual by a state governmental agency.

(2) An individual who constructs, repairs or maintains improvements to residential real property, if the individual conducts home inspections only as part of his or her business of constructing, repairing or maintaining improvements to real property and if the individual does not describe himself or herself as a registered home inspector or convey the impression that he or she is a registered home inspector.

(3) An individual who conducts home inspections in the normal course of his or her employment as an employee of a federal, state or local governmental agency.

History: 1997 a. 81.

440.972 Registration of home inspectors. (1) The department shall register an individual under this subchapter if the individual does all of the following:

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

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

(c) Submits evidence satisfactory to the department that he or she is not subject to a pending criminal charge, or has not been convicted of a felony, misdemeanor or other offense, the circumstances of which substantially relate to the practice of home inspection.

(d) Passes an examination under s. 440.973 (1).

(2) The renewal date for certificates granted under this section is specified under s. 440.08 (2) (a) 38g., and the renewal fee for such certificates is determined by the department under s. 440.03 (9) (a).

History: 1997 a. 81; 2007 a. 20.

Cross−reference: See also ch. SPS 132, Wis. adm. code.

440.973 Examinations. (1) No person may be registered under this subchapter unless he or she passes an examination approved by the department. In approving an examination under this subsection, the department shall consider the use of an examination that is similar to an examination that is required for membership in the American Society of Home Inspectors.

(2) The department shall conduct examinations for home inspector registration at least semiannually at times and places determined by the department.

(3) An individual is not eligible for examination unless the individual has satisfied the requirements for registration under s. 440.972 (1) (a) to (c) at least 30 days before the date of the examination.

History: 1997 a. 81.

Cross−reference: See also chs. SPS 132 and 133, Wis. adm. code.

440.974 Rules. (1) The department shall promulgate rules necessary to administer this subchapter, including rules to establish all of the following:

(a) Standards for acceptable examination performance by an applicant for registration.

(b) Subject to s. 440.975, standards for the practice of home inspection by home inspectors and standards for specifying the mechanical and structural components of improvements to residential real property that are included in a home inspection. The rules promulgated under this paragraph shall include standards for the inspection of carbon monoxide detectors. The rules promulgated under this paragraph may not require a home inspector to use a specified form for the report required under s. 440.975 (3).

(c) Subject to s. 440.975, the information that a home inspector is required to provide to a client concerning the results of the home inspection conducted by the home inspector.

(2) The department shall promulgate rules establishing continuing education requirements for individuals registered under this subchapter. The rules promulgated under this subsection shall require the completion of at least 20 hours of continuing education during each calendar year.

History: 1997 a. 81; 2009 a. 158.

Cross−reference: See also chs. SPS 131, 132, 133, 134, and 135, Wis. adm. code.

440.975 Standards of practice. (1) In this section, "reasonably competent and diligent inspection" means an inspection that complies with the standards established under this subchapter or the rules promulgated under this subchapter.

(2) A home inspector shall perform a reasonably competent and diligent inspection to detect observable conditions of an improvement to residential real property. Except for removing an access panel that is normally removed by an occupant of residential real property, this subsection does not require a home inspector to disassemble any component of an improvement to residential real property. A reasonably competent and diligent inspection under this subsection is not required to be technically exhaustive.

(3) After completing a home inspection, a home inspector shall submit a written report to a client that does all of the following:

(a) Lists the components of an improvement to residential real property that the home inspector is required to inspect under the rules promulgated under s. 440.974 (1) (b).

(b) Lists the components of an improvement to residential real property that the home inspector has inspected.

(c) Describes any condition of an improvement to residential real property or of any component of an improvement to residential real property that is detected by the home inspector during his or her home inspection and that, if not repaired, will have a significant adverse effect on the life expectancy of the improvement or the component of the improvement.

(d) Provides any other information that the home inspector is required to provide under the rules promulgated under s. 440.974 (1) (c).

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(4) A home inspector is not required to report on any of the following:

(a) The life expectancy of an improvement to residential real property or a component of an improvement to residential real property.

(b) The cause of the need for any major repair to an improvement to residential real property or a component of an improvement to residential real property.

(c) The method of making any repair or correction, the materials needed for any repair or correction or the cost of any repair or correction.

(d) The suitability for any specialized use of an improvement to residential real property.

(e) Whether an improvement to residential real property or a component of an improvement to residential real property complies with applicable regulatory requirements.

(f) The condition of any component of an improvement to residential real property that the home inspector was not required to inspect under the rules promulgated under s. 440.974 (1) (b).

(5) A home inspector may not report, either in writing or verbally, on any of the following:

(a) The market value or marketability of a property.

(b) Whether a property should or should not be purchased.

(6) This section does not require a home inspector to do any of the following:

(a) Offer a warranty or guarantee of any kind.

(b) Calculate the strength, adequacy or efficiency of any component of an improvement to residential real property.

(c) Enter any area or perform any procedure that may damage an improvement to residential real property or a component of an improvement to residential real property, or enter any area or perform any procedure that may be dangerous to the home inspector or to other persons.

(d) Operate any component of an improvement to residential real property that is inoperable.

(e) Operate any component of an improvement to residential real property that does not respond to normal operating controls.

(f) Disturb insulation or move personal items, furniture, equipment, vegetation, soil, snow, ice or debris that obstructs access to or visibility of an improvement to residential real property or a component of an improvement to residential real property.

(g) Determine the effectiveness of a component of an improvement to residential real property that was installed to control or remove suspected hazardous substances.

(h) Predict future conditions, including the failure of a component of an improvement to residential real property.

(i) Project or estimate the operating costs of a component of an improvement to residential real property.

(j) Evaluate acoustic characteristics of a component of an improvement to residential real property.

(k) Inspect for the presence or absence of pests, including rodents, insects and wood−damaging organisms.

(L) Inspect cosmetic items, underground items or items not permanently installed.

(m) Inspect for the presence of any hazardous substances.

(7) A home inspector may not do any of the following:

(a) Perform or offer to perform any act or service contrary to law.

(b) Deliver a home inspection report to any person other than the client without the client's consent.

(c) Perform a home inspection for a client with respect to a transaction if the home inspector, a member of the home inspector's immediate family or an organization or business entity in which the home inspector has an interest, is a party to the transaction and has an interest that is adverse to that of the client, unless the home inspector obtains the written consent of the client.

(d) Accept any compensation from more than one party to a transaction for which the home inspector has provided home inspection services without the written consent of all of the parties to the transaction.

(e) Pay or receive, directly or indirectly, in full or in part, for a home inspection or for the performance of any construction, repairs, maintenance or improvements regarding improvements to residential real property that is inspected by him or her, a fee, a commission, or compensation as a referral or finder's fee, to or from any person who is not a home inspector.

(8) This section does not prohibit a home inspector from doing any of the following:

(a) Reporting observations or conditions in addition to those required under this section or the rules promulgated under this section.

(b) Excluding a component of an improvement to residential real property from the inspection, if requested to do so by his or her client.

(c) Engaging in an activity that requires an occupation credential if he or she holds the necessary credential.

History: 1997 a. 81.

Cross−reference: See also ch. SPS 134, Wis. adm. code.

440.976 Disclaimers or limitation of liability. No home inspector may include, as a term or condition in an agreement to conduct a home inspection, any provision that disclaims the liability, or limits the amount of damages for liability, of the home inspector for his or her failure to comply with the standards of practice prescribed in this subchapter or in rules promulgated under this subchapter.

History: 1997 a. 81.

440.977 Liability of home inspectors. (1) Notwithstanding s. 893.54, an action to recover damages for any act or omission of a home inspector relating to a home inspection that he or she conducts shall be commenced within 2 years after the date that a home inspection is completed or be barred. The period of limitation under this subsection may not be reduced by agreement.

(2) A home inspector is not liable to a person for damages that arise from an act or omission relating to a home inspection that he or she conducts if that person is not a party to the transaction for which the home inspection is conducted.

History: 1997 a. 81.

440.978 Discipline; prohibited acts. (1) 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.

(2) Subject to the rules promulgated under s. 440.03 (1), the department may reprimand a home inspector or deny, limit, suspend or revoke a certificate under this subchapter if the department finds that the applicant or home inspector has done any of the following:

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

(b) Engaged in conduct while practicing as a home inspector that evidences a lack of knowledge or ability to apply professional principles or skills.

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

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

(e) Advertised, practiced or attempted to practice as a home inspector under another person's name.

(f) Allowed his or her name to be used by another person while the other person was practicing or attempting to practice as a home inspector.

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

(h) Acted as a home inspector in connection with a transaction in which he or she was also an appraiser or broker.

(i) Performed, or agreed to perform, for compensation any repairs, maintenance or improvements on any property less than 2 years after he or she conducts a home inspection, without the written consent of the property owner given before the home inspection occurred.

(j) Prevented or attempted to prevent a client from providing a copy of, or any information from, a home inspection report done by the home inspector in connection with a transaction to any interested party to the transaction.

(k) Failed to provide a home inspection report to a client by the date agreed on by the home inspector and the client or, if no date was agreed on, within a reasonable time after completing the inspection.

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

(3) In addition to or in lieu of proceeding under sub. (2), the department may assess against a person who has engaged in any of the practices specified in sub. (2) a forfeiture of not more than $1,000 for each separate offense.

(4) In lieu of proceeding under sub. (1) or (2), the department may place, in a registry information file, a copy of a complaint received by the department against a Wisconsin registered home inspector, the inspector's response to the complaint and a copy of any records of the department concerning the complaint. If the department establishes a registry information file under this subsection, the department shall use the following procedure:

(a) No later than 60 days after the date on which the department receives a complaint alleging that a home inspector has engaged in conduct that is grounds for discipline under sub. (2), the department shall provide the inspector with a copy of the complaint and place a copy of the complaint and a copy of any records of the department concerning the complaint in the registry information file.

(b) After receiving a copy of the complaint under par. (a), the home inspector who is the subject of the complaint, or his or her authorized representative, may place in the registry information file a statement of reasonable length describing the inspector's view of the correctness or relevance of any of the information contained in the complaint.

(c) The department shall make the complaint, the home inspector's response to the complaint, if any, and a copy of any records of the department concerning the complaint placed in a registry information file under this subsection available to the public.

(d) The department shall remove all complaints against and other information concerning a home inspector from the registry information file if, for a period of 2 years from the date of the most recent complaint filed in the registry information file, no further complaints have been filed against the inspector.

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

(a) Require the home inspector to obtain insurance against loss, expense and liability resulting from errors and omissions or neglect in the performance of services as a home inspector.

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

History: 1997 a. 81.

Cross−reference: See also ch. SPS 134, Wis. adm. code.

440.979 Report by department. The department shall submit an annual report to the legislature under s. 13.172 (2) that describes all of the following:

(1) The number of home inspectors who are registered under this subchapter.

(2) The number and nature of complaints regarding home inspections that are received by the department from clients of home inspectors.

(3) The number and nature of complaints regarding home inspections that are received by the department from persons who are not clients of home inspectors.

(4) An estimate of the cost of complying with this subchapter that is incurred by home inspectors.

(5) The cost incurred by the department in carrying out its duties under this subchapter.

History: 1997 a. 81; 1999 a. 32 s. 311.

Cross−reference: See also ch. SPS 134, Wis. adm. code.

SUBCHAPTER XII

SANITARIANS

440.98 Sanitarians; qualifications, duties, registration. (1) DEFINITIONS. In this section:

(a) "Municipality" means a county, city or village.

(b) "Sanitarian" means an individual who, through education, training or experience in the natural sciences and their application and through technical knowledge of prevention and control of preventable diseases, is capable of applying environmental control measures so as to protect human health, safety and welfare.

(2) REGISTRATION QUALIFICATIONS. In order to safeguard life, health and property, to promote public welfare and to establish the status of those persons whose duties in environmental sanitation call for knowledge of the natural sciences, the department may establish minimum standards and qualifications for the registration of sanitarians.

(3) SANITARIANS; EMPLOYMENT OR CONTRACTUAL SERVICES. Any agency of the state may employ or contract for the services of sanitarians, registered under this section, who shall enforce the public health statutes under chs. 250 to 256 or rules promulgated under those statutes.

(5) REGISTRATION. Except as provided in s. 440.12 or 440.13, the department shall register as a sanitarian any person who satisfies the conditions in sub. (6) and who has presented evidence satisfactory to the department that sanitarian registration standards and qualifications of the department, as established by rule, have been met.

(6) APPLICATIONS. An application for a sanitarian registration under this section shall be made on a form provided by the department and filed with the department and shall be accompanied by the initial credential fee determined by the department under s. 440.03 (9) (a). The renewal date for a sanitarian registration is specified under s. 440.08 (2) (a), and the renewal fee for such registration is determined by the department under s. 440.03 (9) (a).

(7) RECIPROCITY. The department may by rule set standards for sanitarians registered in other states to practice as registered sanitarians in this state.

(8) REVOCATION OF REGISTRATION. The department may, after a hearing held in conformance with ch. 227, revoke, deny, suspend, or limit under this subchapter the registration of any sanitarian, or reprimand the sanitarian, for practice of fraud or deceit in obtaining the registration or any unprofessional conduct, incompetence, or professional negligence.

(9) FORFEITURE. In addition to or in lieu of a reprimand or a denial, limitation, suspension, or revocation of a registration

under sub. (8), the department may assess against any person a forfeiture of not less than $100 nor more than $1,000 for each violation under sub. (8).

History: 1975 c. 414 s. 28; 1977 c. 29, 418; 1983 a. 189; 1985 a. 182 s. 57; 1987 a. 27; 1993 a. 27 s. 223; Stats. 1993 s. 250.05; 1997 a. 191, 237; 1999 a. 9; 2005 a. 25 ss. 2120 to 2128; Stats. 2005 s. 440.70; 2005 a. 25 ss. 2121 to 2130, 2336m, 2337; 2005 a. 254 s. 35; 2007 a. 20, 130.

Cross−reference: See also chs. SPS 174, 175, 176, and 177, Wis. adm. code.

SUBCHAPTER XIII

LICENSED MIDWIVES

Cross−reference: See also chs. SPS 180, 181, 182, and 183, Wis. adm. code.

440.9805 Definitions. In this subchapter:

(1) "Health care provider" means a health care provider, as defined in s. 146.81 (1) (a) to (p), a person licensed or issued a training permit as an emergency medical technician under s. 256.15, or a person certified as a first responder under s. 256.15 (8) (a).

(2) "Licensed midwife" means a person who has been granted a license under this subchapter to engage in the practice of midwifery.

(3) "Practice of midwifery" means providing maternity care during the antepartum, intrapartum, and postpartum periods.

History: 2005 a. 292; 2007 a. 97 s. 185; 2007 a. 130; 2009 a. 28.

440.981 Use of title; penalty. (1) No person may use the title "licensed midwife," describe or imply that he or she is a licensed midwife, or represent himself or herself as a licensed midwife unless the person is granted a license under this subchapter or is licensed as a nurse−midwife under s. 441.15.

(2) Any person who violates sub. (1) may be fined not more than $250, imprisoned not more than 3 months, or both.

History: 2005 a. 292.

440.982 Licensure. (1) No person may engage in the practice of midwifery unless the person is granted a license under this subchapter, is granted a temporary permit pursuant to a rule promulgated under s. 440.984 (2m), or is licensed as a nurse−midwife under s. 441.15.

(1m) Except as provided in sub. (2), the department may grant a license to a person under this subchapter if all of the following apply:

(a) The person submits an application for the license to the department on a form provided by the department.

(b) The person pays the initial credential fee determined by the department under s. 440.03 (9) (a).

(c) The person submits evidence satisfactory to the department of one of the following:

1. The person holds a valid certified professional midwife credential granted by the North American Registry of Midwives or a successor organization.

2. The person holds a valid certified nurse−midwife credential granted by the American College of Nurse Midwives or a successor organization.

(d) The person submits evidence satisfactory to the department that the person has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38) to provide such instruction.

(2) The department may not grant a license under this subchapter to any person who has been convicted of an offense under s. 940.22, 940.225, 944.06, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.051, 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, 948.11, or 948.12 or under s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

History: 2005 a. 292; 2007 a. 20, 104, 116.

Cross−reference: See also ch. SPS 181, Wis. adm. code.

440.983 Renewal of licensure. (1) The renewal date for licenses granted under this subchapter is specified in s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee determined by the department under s. 440.03 (9) (a).

(2) A licensed midwife shall, at the time that he or she applies for renewal of a license under sub. (1), submit proof satisfactory to the department of all of the following:

(a) He or she holds a valid certified professional midwife credential from the North American Registry of Midwives or a successor organization or a valid certified nurse−midwife credential from the American College of Nurse Midwives or a successor organization.

(b) He or she has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38) to provide such instruction.

History: 2005 a. 292; 2007 a. 20, 104.

440.984 Rule making. (1) The department shall promulgate rules necessary to administer this subchapter. Except as provided in subs. (2), (2m), and (3), any rules regarding the practice of midwifery shall be consistent with standards regarding the practice of midwifery established by the National Association of Certified Professional Midwives or a successor organization.

(2) The rules shall allow a licensed midwife to administer oxygen during the practice of midwifery.

(2m) The rules shall provide for the granting of temporary permits to practice midwifery pending qualification for licensure.

(3) The rules may allow a midwife to administer, during the practice of midwifery, oxytocin (Pitocin) as a postpartum antihemorrhagic agent, intravenous fluids for stabilization, vitamin K, eye prophylactics, and other drugs or procedures as determined by the department.

(4) The rules may not do any of the following:

(a) Require a licensed midwife to have a nursing degree or diploma.

(b) Require a licensed midwife to practice midwifery under the supervision of, or in collaboration with, another health care provider.

(c) Require a licensed midwife to enter into an agreement, written or otherwise, with another health care provider.

(d) Limit the location where a licensed midwife may practice midwifery.

(e) Permit a licensed midwife to use forceps or vacuum extraction.

History: 2005 a. 292.

Cross−reference: See also chs. SPS 180, 181, 182, and 183, Wis. adm. code.

440.985 Informed consent. A licensed midwife shall, at an initial consultation with a client, provide a copy of the rules promulgated by the department under this subchapter and disclose to the client orally and in writing all of the following:

(1) The licensed midwife's experience and training.

(2) Whether the licensed midwife has malpractice liability insurance coverage and the policy limits of any such coverage.

(3) A protocol for medical emergencies, including transportation to a hospital, particular to each client.

(4) Any other information required by department rule.

History: 2005 a. 292.

Cross−reference: See also s. SPS 182.01, Wis. adm. code.

440.986 Disciplinary proceedings and actions. (1) Subject to the rules promulgated under s. 440.03 (1), the department may conduct investigations and hearings to determine whether a violation of this subchapter or any rule promulgated under this subchapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the department may reprimand a licensed midwife or deny, limit, suspend, or revoke a license granted under this subchapter if the

department finds that the applicant or the licensed midwife has done any of the following:

(a) Intentionally made a material misstatement in an application for a license or for renewal of a license.

(b) Subject to ss. 111.321, 111.322, and 111.34, practiced midwifery while his or her ability to engage in the practice was impaired by alcohol or other drugs.

(c) Advertised in a manner that is false or misleading.

(d) In the course of the practice of midwifery, made a substantial misrepresentation that was relied upon by a client.

(e) In the course of the practice of midwifery, engaged in conduct that evidences an inability to apply the principles or skills of midwifery.

(f) Obtained or attempted to obtain compensation through fraud or deceit.

(g) Allowed another person to use a license granted under this subchapter.

(h) Violated any law of this state or federal law that substantially relates to the practice of midwifery, violated this subchapter, or violated any rule promulgated under this subchapter.

(3) Subject to the rules promulgated under s. 440.03 (1), the department shall revoke a license granted under this subchapter if the licensed midwife is convicted of any of the offenses specified in 440.982 (2).

History: 2005 a. 292.

Cross−reference: See also ch. SPS 183, Wis. adm. code.

440.987 Advisory committee. If the department appoints an advisory committee under s. 440.042 to advise the department on matters relating to the regulation of licensed midwives, the committee shall consist of only the following:

(1) Two members who are licensed midwives.

(2) One member who is licensed as a nurse−midwife under s. 441.15 and who practices in an out−of−hospital setting.

(3) One member who is a physician specializing in obstetrics and gynecology.

(4) One public member who has received midwifery care in an out−of−hospital setting.

History: 2005 a. 292.

440.988 Vicarious liability. No health care provider shall be liable for an injury resulting from an act or omission by a licensed midwife, even if the health care provider has consulted with or accepted a referral from the licensed midwife.

History: 2005 a. 292.

SUBCHAPTER XIV

UNIFORM ATHLETE AGENTS ACT

440.99 Definitions. In this subchapter:

(1) "Agency contract" means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional−sports−services contract or an endorsement contract.

(2) "Athlete agent" means an individual who enters into an agency contract with a student athlete or recruits or solicits a student athlete to enter into an agency contract. "Athlete agent" includes an individual who represents to the public that the individual is an athlete agent. "Athlete agent" does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization. "Athlete agent" also does not include an individual who provides information to a student athlete, but who does not recruit or solicit the student athlete to enter into an agency contract.

(3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student athlete, to recruit or solicit the student athlete to enter into an agency contract.

(5) "Endorsement contract" means an agreement under which a student athlete is employed or receives consideration to use on behalf of the other party any value that the student athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(6) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics.

(7) "Professional−sports−services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Registration" means registration as an athlete agent under this subchapter.

(10) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(11) "Student athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student athlete for purposes of that sport.

History: 2003 a. 150.

440.9905 Service of process. By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

History: 2003 a. 150.

440.991 Athlete agents: registration required; void contracts. (1) Except as otherwise provided in sub. (2), an individual may not act as an athlete agent in this state without holding a certificate of registration under s. 440.992 or 440.993.

(2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if all of the following are satisfied:

(a) A student athlete or another person acting on behalf of the student athlete initiates communication with the individual.

(b) Within 7 days after an initial act as an athlete agent, such as an effort to recruit or solicit a student athlete to enter into an agency contract, the individual submits an application for registration as an athlete agent in this state.

(3) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

History: 2003 a. 150.

440.9915 Registration as athlete agent; form; requirements. (1) An applicant for registration as an athlete agent shall submit an application for registration to the department in a form prescribed by the department. The application must be in the name of an individual and, except as otherwise provided in sub. (2), signed or otherwise authenticated by the applicant under penalty of perjury and state or contain all of the following:

(a) The name of the applicant and the address of the applicant's principal place of business.

(b) The name of the applicant's business or employer, if applicable.

(c) Any business or occupation engaged in by the applicant for the 5 years next preceding the date of submission of the application.

(d) A description of all of the following:

1. The applicant's formal training as an athlete agent.

2. The applicant's practical experience as an athlete agent.

3. The applicant's educational background relating to his or her activities as an athlete agent.

(e) The name, sport, and last−known team for each individual for whom the applicant acted as an athlete agent during the 5 years next preceding the date of submission of the application.

(f) If the athlete agent's business is not a corporation, the names and addresses of the partners, members, officers, managers, associates, or profit sharers of the business.

(g) If the athlete agent is employed by a corporation, the names and addresses of the officers and directors of the corporation and any shareholder of the corporation having an interest of 5 percent or more.

(h) Whether the applicant or any person named pursuant to par. (f) or (g) has been convicted of a crime that, if committed in this state, would be a felony, and a description of the crime.

(i) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to par. (f) or (g) has made a false, misleading, deceptive, or fraudulent representation.

(j) Any instance in which the conduct of the applicant or any person named pursuant to par. (f) or (g) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution.

(k) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to par. (f) or (g) arising out of occupational or professional conduct.

(L) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to par. (f) or (g) as an athlete agent in any state.

(2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to sub. (1). The department shall accept the application and the certificate from the other state as an application for registration in this state if all of the following are satisfied:

(a) The application to the other state was submitted in the other state within the 6 months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application to the other state is current.

(b) The application to the other state contains information substantially similar to or more comprehensive than that required in an application submitted in this state.

(c) The application to the other state was signed by the applicant under penalty of perjury.

History: 2003 a. 150.

Cross−reference: See also ch. SPS 151, Wis. adm. code.

440.992 Certificate of registration; issuance or denial; renewal. (1) Except as otherwise provided in sub. (2), the department shall issue a certificate of registration to an individual who complies with s. 440.9915 (1) or whose application has been accepted under s. 440.9915 (2), if the individual has paid the initial credential fee determined by the department under s. 440.03 (9) (a).

(2) The department may refuse to issue a certificate of registration if the department determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the department may consider whether the applicant has done any of the following:

(a) Subject to ss. 111.321, 111.322, and 111.335, been convicted of a crime that, if committed in this state, would be a felony.

(b) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent.

(c) Engaged in unprofessional conduct or conduct that would disqualify the applicant from serving in a fiduciary capacity.

(d) Engaged in conduct prohibited by s. 440.996.

(e) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state.

(f) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student athlete or educational institution.

(g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(3) In making a determination under sub. (2), the department shall consider each of the following:

(a) How recently the conduct occurred.

(b) The nature of the conduct and the context in which it occurred.

(c) Any other relevant conduct of the applicant.

(4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the department. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration. Applications submitted under this subsection shall be open to inspection at all reasonable hours authorized by representatives of the department.

(5) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed under sub. (4), may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The department shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state satisfies all of the following:

(a) The application was submitted in the other state within the 6 months next preceding the filing in this state and the applicant certifies that the information contained in the application for renewal is current.

(b) The application contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state.

(c) The application was signed by the applicant under penalty of perjury.

(6) A certificate of registration or a renewal of a registration is valid for 2 years.

History: 2003 a. 150; 2005 a. 25; 2007 a. 20.

Cross−reference: See also chs. SPS 151 and 152, Wis. adm. code.

440.9925 Suspension, revocation, or refusal to renew registration. (1) The department may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under s. 440.992 (2).

(2) The department may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

History: 2003 a. 150.

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440.993 Temporary registration. The department may issue a temporary certificate of registration while an application for registration or renewal of registration is pending. The department shall promulgate rules establishing requirements and procedures for applying for and issuing temporary certificates of registration.

History: 2003 a. 150.

440.9935 Renewal. The renewal date for certificates of registration issued under this subchapter is specified in s. 440.08 (2) (a), and the renewal fee for such certificates is determined by the department under s. 440.03 (9) (a). Renewal applications shall be submitted to the department on a form provided by the department.

History: 2003 a. 150; 2005 a. 25; 2007 a. 20.
Cross−reference: See also ch. SPS 152, Wis. adm. code.

440.994 Required form of contract. (1) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(2) An agency contract must state or contain all of the following:

(a) The amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent under the contract and any other consideration that the athlete agent has received or will receive from any other source for entering into the contract or for providing the services.

(b) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student athlete signed the agency contract.

(c) A description of any expenses that the student athlete agrees to reimburse.

(d) A description of the services to be provided to the student athlete.

(e) The duration of the contract.

(f) The date of execution.

(3) An agency contract must contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldface type and capital letters stating the following:

WARNING TO STUDENT ATHLETE

IF YOU SIGN THIS CONTRACT:

1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;

2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN WHICH YOU MAY PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(4) An agency contract that does not conform to this section is voidable by the student athlete. If a student athlete voids an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

(5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

History: 2003 a. 150, 326.
Cross−reference: See also ch. SPS 153, Wis. adm. code.

440.9945 Notice to educational institution. (1) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

(2) Within 72 hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the student athlete shall inform the athletic director of the educational institution at which the student athlete is enrolled that he or she has entered into an agency contract.

History: 2003 a. 150.

440.995 Student athlete's right to cancel. (1) A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.

(2) A student athlete may not waive the right to cancel an agency contract.

(3) If a student athlete cancels an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

History: 2003 a. 150.
Cross−reference: See also ch. SPS 153, Wis. adm. code.

440.9955 Required records. (1) An athlete agent shall retain all of the following records for a period of 5 years:

(a) The name and address of each individual represented by the athlete agent.

(b) Any agency contract entered into by the athlete agent.

(c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.

(2) Records required by sub. (1) to be retained are open to inspection by the department during normal business hours. Upon demand, an athlete agent shall provide a copy of such a record to the department.

History: 2003 a. 150.
Cross−reference: See also ch. SPS 153, Wis. adm. code.

440.996 Prohibited conduct. (1) An athlete agent, with the intent to induce a student athlete to enter into an agency contract, may not do any of the following:

(a) Give any materially false or misleading information or make a materially false promise or representation.

(b) Furnish anything of value to a student athlete before the student athlete enters into the agency contract.

(c) Furnish anything of value to any individual other than the student athlete or another registered athlete agent.

(2) An athlete agent may not intentionally do any of the following:

(a) Initiate contact with a student athlete unless registered under this subchapter.

(b) Refuse or fail to retain or permit inspection of the records required to be retained by s. 440.9955.

(c) Fail to register when required by s. 440.991.

(d) Provide materially false or misleading information in an application for registration or renewal of registration.

(f) Predate or postdate an agency contract.

(g) Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

History: 2003 a. 150.
Cross−reference: See also chs. SPS 153 and 154, Wis. adm. code.

440.9965 Criminal penalties. An athlete agent who violates s. 440.996 may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

History: 2003 a. 150.

440.997 Civil remedies. (1) An educational institution may bring an action against an athlete agent for damages caused by a

violation of this subchapter. In an action under this subsection, the court may award to the prevailing party costs and, notwithstanding s. 814.04, reasonable attorney fees.

(2) Damages of an educational institution under sub. (1) include losses and expenses incurred because, as a result of the conduct of an athlete agent, the educational institution was injured by a violation of this subchapter or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self−imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent.

(5) This subchapter does not restrict rights, remedies, or defenses of any person under law or equity.

History: 2003 a. 150.

440.9975 Administrative forfeiture. The department may directly assess a forfeiture against an athlete agent of not more than $25,000 for a violation of this subchapter.

History: 2003 a. 150.

440.998 Uniformity of application and construction. In applying and construing this subchapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact the Uniform Athlete Agents Act.

History: 2003 a. 150.

440.9985 Electronic Signatures in Global and National Commerce Act. The provisions of this subchapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of section 102 of the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7002, and supersede, modify, and limit the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001 to 7031.

History: 2003 a. 150.

440.999 Rules. The department shall promulgate rules that define unprofessional conduct for purposes of s. 440.992 (2) (c).

History: 2003 a. 150.

Cross−reference: See also chs. SPS 150, 151, 152, 153, and 154, Wis. adm. code.

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CHAPTER 452

REAL ESTATE PRACTICE

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Cross−reference: See definitions in s. 440.01.

Cross−reference: See also chs. REEB 11, 12, 15, 16, 17, 18, 22, 23, 24, 25, and 26, Wis. adm. code.

452.01 Definitions. In this chapter:

(1e) "Adverse fact" means any of the following:

(a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

1. Significantly and adversely affecting the value of the property.

2. Significantly reducing the structural integrity of improvements to real estate.

3. Presenting a significant health risk to occupants of the property.

(b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a contract or agreement made concerning the transaction.

(1m) "Agency agreement" means a written agreement between a broker and a client in which the client authorizes the broker to provide brokerage services to the client.

(1s) "Board" means real estate examining board.

(2) "Broker" means any person not excluded by sub. (3), who does any of the following:

(a) For another person, and for commission, money, or other thing of value, negotiates or offers or attempts to negotiate a sale, exchange, purchase, or rental of, or the granting or acceptance of an option to sell, exchange, purchase, or rent, an interest or estate in real estate, a time share, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property.

(b) Is engaged wholly or in part in the business of selling or exchanging interests or estates in real estate or businesses, including businesses' goodwill, inventory, or fixtures, whether or not the business includes real property, to the extent that a pattern of sales or exchanges is established, whether or not the person owns the real estate or businesses. Five sales or exchanges in one year or 10 sales or exchanges in 5 years is presumptive evidence of a pattern of sales or exchanges.

(bm) For another person, and for commission, money, or other thing of value shows real estate or a business or its inventory or fixtures, whether or not the business includes real property, except that this paragraph does not include showing a property that is offered exclusively for rent.

(h) For another person, and for commission, money, or other thing of value, promotes the sale, exchange, purchase, option, rental, or leasing of real estate, a time share, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property. This paragraph does not apply to a person who only publishes or disseminates verbatim information provided by another person.

(3) "Broker" does not include any of the following:

(a) Receivers, trustees, personal representatives, guardians, or other persons appointed by or acting under the judgment or order of any court.

(b) Public officers while performing their official duties.

(c) Any bank, trust company, savings bank, savings and loan association, insurance company, or any 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.

(d) Employees of persons enumerated in pars. (a) to (c) and (f) when engaged in the specific performance of their duties as such employees.

(dm) Any employee of an attorney under par. (h) if all of the following are true:

1. The employee's activities are directly supportive of the attorney's provision of legal services to the attorney's client.

2. The employee's activities are activities that the attorney may perform under par. (h).

3. The employee is under the direction and supervision of the attorney.

(e) Any custodian, janitor, employee or agent of the owner or manager of a residential building who exhibits a residential unit therein to prospective tenants, accepts applications for leases and furnishes such prospective tenants with information relative to the rental of such unit, terms and conditions of leases required by the owner or manager, and similar information.

(f) Any credit union which negotiates loans secured by real estate mortgages or any licensee under ch. 138 which negotiates loans secured by real estate mortgages or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan, secured or to be secured by mortgage or other transfer of or encumbrance on real estate.

(g) A person licensed as a mortgage banker under s. 224.72 who does not engage in activities described under sub. (2).

(h) Attorneys licensed to practice in this state while acting within the scope of their attorney's license.

(3e) "Brokerage service" means any service described under sub. (2) provided by a broker to another person.

(3j) "Business entity" means any organization or enterprise, other than a sole proprietorship, which is operated for profit or that is nonprofit and nongovernmental, including an association, business trust, corporation, joint venture, limited liability company, limited liability partnership, partnership or syndicate.

(3k) "Business representative" means a director, manager, member, officer, owner or partner of a business entity.

(3m) "Client" means a party to a transaction who has an agency agreement with a broker for brokerage services.

(3s) "Customer" means a party to a transaction who is provided brokerage services by a broker but who is not a client.

(3w) "Designated agency" means a multiple representation relationship in which each client of the broker in the multiple representation relationship receives negotiation services from the broker only from employees of the broker who are not providing negotiation services to any other client of the broker in the transaction.

(4) "Disciplinary proceeding" means a proceeding against one or more licensees or registrants in which the board may revoke, suspend or limit a license or registration, reprimand a licensee or registrant, issue a private letter of warning to a licensee or registrant, or assess a forfeiture or require education or training under s. 452.14 (4m).

(4d) "Employ," when used in reference to a broker employing another broker, a salesperson, or a time−share salesperson, means engaging the services of another broker, a salesperson, or a time−share salesperson to provide brokerage services to the broker's clients and customers on behalf of the broker and under the broker's supervision, including engaging a broker, salesperson, or time−share salesperson as an independent contractor.

(4h) "Employee," when used in reference to an employee of a broker, means another broker, a salesperson, or a time−share salesperson who provides brokerage services to the broker's clients and customers on behalf of the broker and under the broker's supervision, including a broker, salesperson, or time−share salesperson engaged by the broker as an independent contractor.

(4p) "Employer," when used in reference to a broker who is the employer of another broker, a salesperson, or a time−share salesperson, means a broker who engages the services of another broker, a salesperson, or a time−share salesperson to provide brokerage services to the broker's clients and customers on behalf of the broker and under the broker's supervision, including a broker who engages the services of another broker, salesperson, or time−share salesperson as an independent contractor.

(4t) "Employment," when used in reference to a broker's employment of another broker, a salesperson, or a time−share salesperson, means the state of being engaged by a broker to provide services to the broker's clients and customers on behalf of the broker and under the broker's supervision, including being engaged by the employing broker as an independent contractor.

(5) "Licensee" means any person licensed or registered under this chapter, other than an inactive licensee registered under s. 452.12 (6).

(5g) "Material adverse fact" means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects or would affect the party's decision about the terms of such a contract or agreement.

(5j) "Multiple representation relationship" means a relationship between a broker and 2 or more of the broker's clients in which the clients are parties in the same transaction.

(5m) "Negotiate" means to provide to a party assistance within the scope of the knowledge, skills, and training required under this chapter in developing a proposal or agreement relating to a transaction, including doing any of the following:

(a) Acting as an intermediary by facilitating or participating in communications between parties related to the parties' interests in a transaction. In this paragraph, providing advice or opinions on matters that are material to a transaction in which a person is engaged or intends to engage or showing a party real estate does not, in and of itself, constitute acting as an intermediary by facilitating or participating in communications between parties.

(b) Completing, when requested by a party, appropriate department−approved forms or other writings to document the party's proposal consistent with the party's intent.

(c) Presenting to a party the proposals of other parties to the transaction and giving the party a general explanation of the provisions of the proposal.

(5r) "Party" means a person seeking to engage in a transaction.

(5w) "Principal broker" means a broker who engages a subagent to provide brokerage services in a transaction.

(6) "Real estate practice" means engaging in conduct which requires a license under this chapter.

(7) "Salesperson" means any person other than a broker or time−share salesperson who is employed by a broker.

(7r) "Subagent" means a broker who is engaged by another broker to provide brokerage services in a transaction, but who is not the other broker's employee.

(8) "Time share" has the meaning given in s. 707.02 (24).

(9) "Time−share salesperson" means a person, other than a person licensed under s. 452.09, who is employed by a licensed broker to sell or offer or attempt to negotiate an initial sale or purchase of a time share but who may not perform any other acts authorized by this chapter to be performed by a broker or salesperson.

(10) "Transaction" means the sale, exchange, purchase or rental of, or the granting or acceptance of an option to sell, exchange, purchase or rent, an interest in real estate, a business or a business opportunity.

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102; 2005 a. 87; 2009 a. 2; 2011 a. 32.

A foreign corporation that entered into a brokerage contract to sell a radio station without being licensed in this state could not sue for its commission. The licensing requirement is not an unlawful burden on interstate commerce. Chapman Company, Inc. v. Service Broadcasting Corporation, 52 Wis. 2d 32, 187 N.W.2d 794 (1971).

Units of interest in a limited partnership are personalty and not real estate, and no real estate broker's license is required for their sale. 60 Atty. Gen. 254.

Although sub. (2) (d) speaks of the sale or purchase of a "business," it is not defined. However, "business entity" is defined in sub. (3j) as any organization or enterprise, other than a sole proprietorship, operated for profit or operated not for profit but nongovernmental. A natural reading of the statute is that "business" differs from "business entity." Reading "business" in the context of the rest of the statute, it must be separate from or broader than "business entity." Because sales of corporate stock are specifically governed by securities laws suggests strongly that they are outside the intended scope of ss. 452.01 and 452.20. Bertha v. Remy International, Inc., 414 F. Supp. 2d 869 (2006).

The 'New' Chapter 452: Defining Real Estate Broker Practice. Leibsle. Wis. Law. June 2006.

452.025 Time−share salespersons. (1) (a) A person desiring to act as a time−share salesperson shall submit to the board an application for a certificate of registration.

(b) The application for registration as a time−share salesperson shall be in the form prescribed by the board and shall include all of the following:

1. The name and address of the applicant.

2. The prior occupations of the applicant.

3. Certification from the licensed broker employing the applicant that the applicant is competent to act as a time−share salesperson.

4. Any other information that the board reasonably requires to enable it to determine the competency of the person to transact business as a time−share salesperson in a manner that safeguards the interests of the public.

(c) Each application for registration as a time−share salesperson shall be accompanied by an initial credential fee determined by the department under s. 440.03 (9) (a) or the applicable renewal fee determined by the department under s. 440.03 (9) (a), whichever is appropriate.

(2) A person shall not engage in the business or occupation of, or advertise or hold himself or herself out as, a time−share salesperson unless the person is registered under this section or licensed under s. 452.09.

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(3) (a) A time−share salesperson registered under this section may act as a time−share salesperson only when employed by a licensed broker.

(b) 1. Except as provided in subd. 2., a time−share salesperson registered under this section shall not draft or complete a purchase agreement, offer to purchase, or other contract or document related to the sale of a time share.

2. A time−share salesperson registered under this section may complete a form purchase agreement or offer to purchase, if the form purchase agreement or offer to purchase has been approved by the board and includes only the following:

a. The name, address and telephone number of the purchaser.

b. The name of the time−share project.

c. Identification and price of the time share being purchased and the amount of the downpayment and where it will be held.

d. Financing alternatives.

e. Disclosures under subch. III of ch. 422 and the federal consumer credit protection act, 15 USC 1601 to 1693r.

f. The date of closing.

g. The signature of the time−share salesperson and the name of the employing broker.

h. The date of execution.

i. Information required under s. 707.46 to be included in a contract for the purchase of a time share.

(4) A time−share salesperson registered under this section may apply at any time to transfer employment to another licensed broker by submitting to the board an application in the form prescribed by the board and the transfer fee specified in s. 440.05 (7).

(5) (a) The renewal date for certificates of registration granted by the board under this section is specified under s. 440.08 (2) (a).

(b) An application to renew a certificate of registration granted under this section shall be submitted with the applicable renewal fee determined by the department under s. 440.03 (9) (a) on or before the applicable renewal date specified under s. 440.08 (2) (a).

History: 1987 a. 399; 1989 a. 31; 1991 a. 39; 2007 a. 20; 2011 a. 32.

452.03 Brokers and salespersons licensed. No person may engage in or follow the business or occupation of, or advertise or hold himself or herself out as, or act temporarily or otherwise as a broker or salesperson without a license. The board may grant a license only to a person who is competent to transact such businesses in a manner that safeguards the interests of the public, and only after satisfactory proof of the person's competence has been presented to the board.

History: 1981 c. 94, 391; 1989 a. 307; 2011 a. 32.

Under s. 452.03 an agreement to pay a real estate brokerage commission to a person not licensed as a broker is void at its inception. Using a licensed broker who provides no actual services as a conduit for a fee to an unlicensed person does not create a co−brokerage arrangement authorized by s. 452.19. Badger III Ltd. v. Howard, Needles, Tammen & Bergendoff, 196 Wis. 2d 891, 539 N.W.2d 904 (Ct. App. 1995), 94−2531.

Officers of a corporation or partners of a partnership can act for the corporation or partnership in the rental of real estate owned by the entity without being licensed as real estate brokers. 60 Atty. Gen. 1 (1971).

Actions of a tenants union on behalf of its members may require a real estate broker's license. 60 Atty. Gen. 118 (1971).

The permitted limits of nonlicensed independent contractor agents are discussed. 70 Atty. Gen. 23.

452.05 Duties and powers of board. (1) In addition to the other duties and responsibilities of the board under this chapter, the board shall advise the secretary on matters relating to real estate practice and shall:

(a) Grant and issue licenses to brokers and salespersons and registrations to time−share salespersons.

(b) Approve forms for use in real estate practice. The board may conduct public hearings on matters relating to the approval of forms used in real estate practice.

(c) After consultation with the council on real estate curriculum and examinations, promulgate rules establishing criteria for the approval of educational programs and training sessions under s. 452.09 (2) and approve such programs and sessions in accordance with the established criteria.

(d) After consultation with the council on real estate curriculum and examinations, brokers and salespersons licensed under this chapter, and interested members of the public, establish criteria for the approval of continuing educational programs and courses in real estate related subjects required for renewal under s. 452.12 (5) (c).

(g) Approve continuing educational programs and courses in accordance with the criteria established under par. (d). In order to be approved, a continuing educational program or course must require brokers and salespersons to pass an examination on the information presented at the program or course in order to successfully complete and receive continuing education credit for the program or course under s. 452.12 (5) (c).

(1m) (a) In this subsection:

1. "Certified local register of historic property" means a register of historic property that is part of a historic preservation ordinance enacted by a city, village, town or county if the ordinance is certified by the state historical society under s. 44.44.

2. "Commercial real property" means real property that is classified as commercial under s. 70.32 (2) (a) 2.

3. "Historic building" means a building that fulfills at least one of the following requirements:

a. Is listed on a certified local register of historic property, if that fact is specified in a statement recorded in the office of the register of deeds for the county in which the commercial real estate is located.

b. Is included in a district that is listed on a certified local register of historic property, if that fact is specified in a statement recorded in the office of the register of deeds for the county in which the commercial real estate is located, and has been determined by the city, village, town or county to contribute to the historic significance of the district.

(b) In preparing the form for the offer to purchase commercial real property under sub. (1) (b), the board shall include a statement that the seller represents to the buyer that the seller has no notice or knowledge that the commercial real property is a historic building.

(2) The board may prepare letters and bulletins and conduct clinics disseminating information to its licensees.

(3) The board may enter into reciprocal agreements with officials of other states or territories of the United States for licensing brokers and salespersons and grant licenses to applicants who are licensed as brokers or salespersons in those states or territories according to the terms of the reciprocal agreements.

History: 1981 c. 94, 391; 1985 a. 305 ss. 1t, 7; 1987 a. 399; 1989 a. 307, 341; 1991 a. 39; 1993 a. 141; 1995 a. 27; 1997 a. 27; 2003 a. 168; 2011 a. 32.

A corporation cannot be licensed as real estate salesperson. 71 Atty. Gen. 38.

452.06 Councils and committees. (1) The board shall create one or more councils on forms which shall meet on a regular basis, be chaired by a member of the board, and report to the board. Any proposed change in a form relating to real estate practice shall be referred to the appropriate council on forms for review before the form is approved.

(2) The council on real estate curriculum and examinations shall do all of the following:

(a) Advise the board on establishing continuing education requirements under s. 452.05 (1) (d).

(b) Not less than annually, review subjects covered on examinations for licensure under this chapter and the qualifications for instructors of and performance evaluations for educational and continuing educational programs, training sessions, and courses approved under this chapter.

(3) If the secretary creates any councils or committees under s. 15.04 (1) (c) to provide advice to the department or board on

matters relating to real estate practice, such councils or committees shall be chaired by a member of the board, if available, and shall report to the board and the secretary.

(4) The secretary shall provide staff and other support required for the operation of councils and committees created under this section or under s. 15.04 (1) (c) to provide advice to the department or board, as appropriate, on matters relating to real estate practice.

History: 1981 c. 94; 1989 a. 341; 1991 a. 39; 2011 a. 32.

452.07 Rules. (1) The board shall promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice.

(1m) The board shall promulgate rules that specify the supervisory duties of brokers under s. 452.12 (3).

History: 1981 c. 94; 1985 a. 182 s. 57; 1987 a. 403 s. 256; 2001 a. 16; 2011 a. 32.

Cross−reference: See also chs. REEB 11, 12, 15, 16, 17, 18, 22, 23, 24, 25, and 26, Wis. adm. code.

452.08 Board receipt of proposed legislation. The secretary shall submit to the board in writing any legislation proposed by the department relating to licensees or the board prior to introduction in the legislature.

History: 1981 c. 94.

452.09 Application for license, contents. (1) FORM OF APPLICATION. Any person desiring to act as a broker or salesperson shall submit to the board an application for a license. The application shall be in such form as the board prescribes and shall include the following:

(a) The kind of license desired.

(b) The name and address of the applicant; if the applicant is a business entity, the name and address of each business representative.

(c) The place or places, including the town, village or city, street number and county, where the business is to be conducted, and the manner in which the place of business is designated.

(d) The business or occupation engaged in by the applicant, or if a business entity, by each business representative, for a period of at least 2 years immediately preceding the date of the application.

(e) Any other information that the board may reasonably require to enable it to determine the competency of each applicant, including each business representative of the business entity, to transact the business of a broker or salesperson in a manner that safeguards the interests of the public.

(2) EDUCATIONAL REQUIREMENTS FOR APPLICANTS FOR LICENSES. (a) Except as provided in a reciprocal agreement under s. 452.05 (3), each applicant for a salesperson's license shall submit to the board evidence satisfactory to the board of successful completion of educational programs approved for this purpose under s. 452.05 (1) (c). The board may waive the requirement under this paragraph upon proof that the applicant has received 10 academic credits in real estate or real estate related law courses from an accredited institution of higher education.

(c) Except as provided in par. (d) or a reciprocal agreement under s. 452.05 (3), each applicant for a broker's license shall do all of the following:

1. Satisfy or obtain a waiver of the requirement under par. (a) or submit proof of licensure as a salesperson under this chapter.

2. Submit to the board evidence satisfactory to the board of successful completion of educational programs in business management approved for this purpose under s. 452.05 (1) (c). No educational programs applied to satisfy the requirement under subd. 1. may be applied to satisfy the requirement under this subdivision.

(d) The board may waive the requirements under par. (c) upon proof that the applicant has received 20 academic credits in real estate or real estate related law courses from an accredited institution of higher education or that the applicant is licensed to practice law in this state.

(3) COMPETENCY OF APPLICANT. (a) In determining competency, the board shall require proof that the applicant for a broker's or salesperson's license has a fair knowledge of the English language; a fair understanding of the general purposes and general legal effect of deeds, mortgages, land contracts of sale, leases, bills of sale, chattel mortgages, and conditional sales contracts; and a general and fair understanding of the obligations between principal and agent, as well as of this chapter. The board shall deny a license to an applicant receiving a failing grade, as established by rules of the board, on any examination given under this section, but any applicant may review his or her examination results in a manner established by rules of the board.

(b) The board shall determine competency under par. (a) by means of only an oral examination for any applicant who is unable to write because of a physical handicap.

(c) Examinations shall reliably measure an applicant's ability to competently engage in real estate practice.

(d) Except as provided in a reciprocal agreement under s. 452.05 (3), the board may not grant a broker's license to an applicant who does not hold a salesperson's license unless the applicant passes the salesperson's examination and the broker's examination.

(e) An applicant is not eligible for examination unless the applicant has satisfied the applicable requirements under sub. (2).

(5) APPRENTICESHIPS. Any person who is a resident of this state and 18 years of age or over may, upon application filed in accordance with sub. (1), be indentured to a licensed resident broker in accordance with rules promulgated by the board. These rules shall be promulgated so as to protect the public and may limit the real estate sales and brokerage activity of the apprentice. The board may require an apprentice to take a preliminary examination covering general knowledge and may prescribe the character and extent of his or her work during apprenticeship. The board may issue a temporary salesperson's permit to the individual for a period not to exceed one year upon payment of the fee under s. 440.05 (6). The temporary permit is not renewable.

History: 1981 c. 94, 391; 1983 a. 273; 1985 a. 305; 1989 a. 341; 1995 a. 400; 1997 a. 27; 2003 a. 168; 2009 a. 110; 2011 a. 32.

Cross−reference: See also chs. REEB 12, 22, 23, and 25, Wis. adm. code.

452.10 Applications, verification, fees, exceptions. (1) An application shall be verified by the applicant. If made by a business entity it shall be verified by a business representative.

(2) (a) Each new application for a broker's or salesperson's license shall be for the remainder of the biennial license period.

(b) Unless an application is withdrawn in writing before the board has made any investigation, no part of the fee shall be returned.

(3) The fees for examinations and licenses granted under this chapter are specified under s. 440.05, and the renewal fee for such licenses is determined by the department under s. 440.03 (9) (a).

(4) (a) Any licensed salesperson or broker may transfer to the employment of a licensed broker by first paying the transfer fee specified in s. 440.05 (7) and filing a transfer form with the board.

(b) No salesperson, time−share salesperson or broker may be employed by a broker whose license has been suspended or revoked during the period of suspension or revocation. The salesperson, time−share salesperson or broker may apply for transfer to some other licensed broker by complying with this chapter, provided the salesperson, time−share salesperson or broker is not a party to the activities causing the suspension or revocation of the license of the broker.

(6) In the case of applications for renewals of licenses the board may dispense with such matters contained in s. 452.09 (1) as it deems unnecessary in view of prior applications.

History: 1981 c. 94, 314, 391; 1983 a. 27, 273; 1985 a. 305; 1987 a. 264, 399; 1989 a. 307; 1991 a. 39; 1995 a. 400; 2007 a. 20; 2011 a. 32.

Cross−reference: See also ch. REEB 12 and 23, Wis. adm. code.

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The real estate examining board cannot prescribe the name to be used on an application for a real estate broker's license. 66 Atty. Gen. 21.

452.11 Nonresident applicants and licensees. (1) A nonresident may become a broker, salesperson or time−share salesperson by conforming to all the provisions of this chapter.

(3) Every nonresident applicant, and every resident licensee who becomes a nonresident, shall file with the board an irrevocable consent that actions may be commenced against the applicant or licensee in the proper court of any county of the state in which a cause of action arises or in which the plaintiff resides, by the service of any process or pleading authorized by the laws of this state on the board or any duly authorized employee. The consent shall stipulate and agree that such service is valid and binding as due service upon the applicant or licensee in all courts in this state. The consent shall be duly acknowledged and, if made by a corporation, shall be authenticated by the corporate seal.

(4) Any process or pleading under this section shall be served in duplicate upon the board or its duly authorized employee. One copy shall be filed with the board and the other immediately forwarded by certified mail to the nonresident licensee against whom the process or pleading is directed at the last address provided to the board by the nonresident licensee. No default in any such proceeding or action may be taken unless it appears by affidavit of the chairperson of the board or any duly authorized employee that a copy of the process or pleading was mailed to the nonresident licensee as required in this subsection. No judgment by default may be taken in any action or proceeding within 20 days after the date of mailing the process or pleading to the nonresident licensee.

History: 1981 c. 94; 1983 a. 27; 1987 a. 399; 1991 a. 207; 2011 a. 32.

Cross−reference: See also ch. REEB 12, Wis. adm. code.

452.12 Licenses. (1) EXPIRATION. A license granted by the board entitles the holder to act as a broker or salesperson, as the case may be, until the applicable renewal date specified under s. 440.08 (2) (a).

(2) BUSINESS ENTITIES. (a) A license may be issued to a business entity if the business entity has at least one business representative licensed as a broker. The license issued to the business entity entitles each business representative of the business entity who is a licensed broker to act as a broker on behalf of the business entity.

(c) Application for a business entity license shall be made on forms prescribed by the board, listing the names and addresses of all business representatives, and shall be accompanied by the initial credential fee determined by the department under s. 440.03 (9) (a). If there is a change in any of the business representatives, the change shall be reported to the board, on the same form, within 30 days after the effective date of the change.

(3) BROKER'S LIABILITY FOR ACTS OF EMPLOYEES. Each broker shall supervise, and is responsible for, the brokerage services provided on behalf of the broker by any broker, salesperson, or time−share salesperson who is an employee of the broker.

(4) REGISTER OF BROKERS AND SALESPERSONS. The board shall include in the register the board maintains under s. 440.035 (4) the names of all brokers and salespersons whose licenses were revoked within the past 2 years. The register shall be available for purchase at cost.

(5) RENEWAL. (a) Renewal applications for all licenses shall be submitted with the applicable renewal fee determined by the department under s. 440.03 (9) (a) on or before the applicable renewal date specified under s. 440.08 (2) (a). The department shall pay $10 of each renewal fee received under this paragraph to the Board of Regents of the University of Wisconsin System for research and educational, public outreach, and grant activities under s. 36.25 (34).

(b) If an application for renewal is not filed with the board on or before the renewal date, the applicant may not engage in any of the activities covered by the license until the license is renewed or a new license is issued.

(c) At the time of renewal, each broker or salesperson shall submit proof of attendance at and successful completion of continuing education programs or courses approved under s. 452.05 (1) (g).

(6) INACTIVE LICENSEES. (a) Any licensee, except a time−share salesperson registered under s. 452.025, may apply for registration as an inactive licensee on or before the license renewal date. This paragraph does not apply after October 31, 1995.

(b) Unless an applicant's license has been revoked or suspended under s. 452.14 (3), the board may register the applicant under par. (a) as an inactive licensee upon payment of a $15 fee.

(c) Inactive licensees may not engage in real estate practice.

(d) If an inactive licensee files an application for reinstatement before January 1, 1996, the board shall reinstate the inactive licensee's original license in accordance with the requirements for late renewal under s. 440.08 (3).

(e) Except as provided in ss. 440.03 (11m) (b), 440.12 and 440.13 (2) (c), the board shall reinstate an inactive licensee's original license as follows:

1. If a person has registered as an inactive licensee before November 1, 1990, the board shall reinstate the person's original license if that person applies to the board for reinstatement of his or her original license, pays the fee specified under s. 440.05 (1), passes an examination under s. 452.09 (3), and completes the education requirements established by the board under par. (f).

2. If a person has registered as an inactive licensee on or after November 1, 1990, the board shall reinstate the person's original license if that person applies to the board for reinstatement of his or her original license, pays the renewal fee determined by the department under s. 440.03 (9) (a) for the original license and completes the continuing education requirements established by the board under par. (f). A person who is eligible for reinstatement of his or her original license under this subdivision shall complete the requirements for reinstatement under this subdivision before January 1, 1996, or within 5 years after the date on which the person registered as an inactive licensee, whichever is later.

3. If a person who is eligible for reinstatement of his or her original license under subd. 2. does not complete the requirements for reinstatement within the time specified under subd. 2., the board shall reinstate the original license of that person if he or she meets the requirements specified under subd. 1.

(f) The board shall promulgate rules establishing the education requirements that applicants for reinstatement of original licenses under par. (e) must satisfy.

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 264, 399; 1989 a. 307, 341; 1991 a. 39; 1995 a. 27, 400; 1997 a. 27, 191, 237; 2001 a. 16; 2005 a. 87; 2007 a. 20; 2011 a. 32.

Cross−reference: See also chs. REEB 17, 23, and 25, Wis. adm. code.

452.13 Trust accounts. (1) DEFINITIONS. In this section:

(a) "Client funds" means all downpayments, earnest money deposits or other money related to a conveyance of real estate that is received by a broker, salesperson or time−share salesperson on behalf of the broker's, salesperson's or time−share salesperson's principal or any other person. "Client funds" does not include promissory notes.

(b) "Depository institution" means a bank, savings bank, savings and loan association or credit union that is authorized by federal or state law to do business in this state and that is insured by the federal deposit insurance corporation or by the national credit union share insurance fund.

(2) INTEREST−BEARING COMMON TRUST ACCOUNT. (a) A broker who holds client funds shall establish an interest−bearing common trust account in a depository institution. The interest−bearing common trust account shall earn interest at a rate not less than that applicable to individual accounts of the same type, size and duration and for which withdrawals or transfers can be made without delay, subject to any notice period that the depository institution is required to observe by law or regulation.

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(b) Any broker who maintains an interest−bearing common trust account shall do all of the following:

1. Register with the department of safety and professional services the name and address of the depository institution and the number of the interest−bearing common trust account.

2. Notify the department of safety and professional services when any of the information required under subd. 1. is changed.

3. Furnish the department of safety and professional services with a letter authorizing the department of safety and professional services and the department of administration to examine and audit the interest−bearing common trust account whenever the department of safety and professional services or the department of administration considers it necessary.

(bm) The department of safety and professional services shall forward to the department of administration the information and documents furnished under par. (b).

(c) A broker shall deposit all client funds in the interest−bearing common trust account.

(d) The department of administration is the beneficial owner of the interest accruing to the interest−bearing common trust account, minus any service charges or fees.

(e) For each interest−bearing common trust account, the broker shall direct the depository institution to do all of the following:

1. Annually, before February 1, remit to the department of administration the total interest or dividends, minus service charges or fees, earned on the average daily balance in the interest−bearing common trust account during the 12 months ending on the previous December 31. A depository institution is not required to remit any amount if the total interest or dividends for that period is less than $10 before any deduction for service charges or fees.

2. When the interest remittance is sent, furnish to the department of administration and to the broker maintaining the interest−bearing common trust account a statement that includes the name of the broker for whose account the remittance is made, the rate of interest applied, the amount of service charges or fees deducted, if any, and the account balance for the period that the statement covers.

(f) A depository institution:

1. May not assess a service charge or fee that is due on an interest−bearing common trust account against any broker or, except as provided in subd. 3., against any other account, regardless of whether the same broker maintains the other account.

2. May not assess a service charge or fee for an interest−bearing common trust account against the department of administration.

3. May deduct a service charge or fee from the interest earned by an interest−bearing common trust account, and if a balance remains, may deduct the remaining charge or fee from the interest earned on any other interest−bearing common trust account maintained in that depository institution, before remitting interest to the department of administration.

4. May not deduct a service charge or fee from the principal of an interest−bearing common trust account.

(3) DEPOSIT PROVISIONS. A broker who deposits client funds in an interest−bearing common trust account in compliance with this section may not be held liable to the owner or beneficial owner of the client funds for damages due to compliance with this section. A broker, salesperson or time−share salesperson who deposits client funds in an interest−bearing common trust account in compliance with this section is not required to disclose alternative depository arrangements that could be made by the parties or to disclose that a deposit will be made under this section.

(4) TRUST ACCOUNT OPTIONAL. This section does not require a broker to hold client funds or require a person to transfer client funds to a broker.

(5) RULES. In consultation with the department of safety and professional services, the department of administration shall promulgate rules necessary to administer this section.

History: 1981 c. 94, 391; 1985 a. 305; 1987 a. 399; 1989 a. 307; 1991 a. 221; 1993 a. 33; 2005 a. 25; 2011 a. 32.

Cross−reference: See also chs. Adm 91 and REEB 18, Wis. adm. code.

Security deposits by a tenant usually create a debtor−creditor relationship. A broker retaining a deposit should deposit it in his or her trust account. 60 Atty. Gen. 1.

The Federal National Mortgage Association is exempt from the requirements of this section, but private mortgage bankers or mortgage brokers licensed as real estate brokers under ch. 452, and servicing mortgages for FNMA must deposit loan, insurance and tax escrow moneys in authorized trust account in a bank located in Wisconsin, subject to audit by the board. 60 Atty. Gen. 514.

452.133 Duties of brokers. (1) BROKER'S DUTIES TO ALL PERSONS IN A TRANSACTION. A broker who is providing brokerage services to a person in a transaction owes all of the following duties to the person:

(a) The duty to provide brokerage services honestly and fairly.

(b) The duty to provide brokerage services with reasonable skill and care.

(c) The duty to timely disclose in writing all material adverse facts that the broker knows and that the person does not know or cannot discover through reasonably vigilant observation, unless the disclosure of a material adverse fact is prohibited by law.

(d) The duty to keep confidential any information given to the broker in confidence, or any information obtained by the broker that he or she knows a reasonable person would want to be kept confidential, unless the information must be disclosed by law or the person whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of particular information. A broker shall continue to keep the information confidential after the transaction is complete and after the broker is no longer providing brokerage services to the person.

(e) The duty to provide accurate information about market conditions that affect the person's transaction, within a reasonable time after the person's request, unless disclosure of the information is prohibited by law.

(f) The duty to safeguard trust funds and other property held by the broker as required by rules promulgated by the department under s. 452.13 (5).

(g) When the broker is negotiating on behalf of a party, the duty to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

(2) BROKER'S DUTIES TO A CLIENT. A broker providing brokerage services to his or her client owes the client the duties that the broker owes to a person under sub. (1) and all of the following additional duties:

(a) The duty to loyally represent the client's interests by doing all of the following:

1. Placing the client's interests ahead of the broker's interests.

2. Placing the client's interests ahead of the interests of persons in the transaction who are not the broker's clients by not disclosing to persons in the transaction other than the broker's clients information or advice the disclosure of which is contrary to the interests of a client of the broker, unless the disclosure is required by law.

(am) The duty to provide, when requested by the client, information and advice to the client on matters that are material to the client's transaction and that are within the scope of the knowledge, skills, and training required under this chapter.

(b) The duty to disclose to the client all information known by the broker that is material to the transaction and that is not known by the client or discoverable by the client through reasonably vigilant observation, except for confidential information under sub. (1) (d) and other information the disclosure of which is prohibited by law.

(c) The duty to fulfill any obligation required by the agency agreement, and any order of the client that is within the scope of

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the agency agreement, that is not inconsistent with another duty that the broker has under this chapter or any other law.

(d) The duty to negotiate on behalf of the client.

(3) PROHIBITED CONDUCT. In providing brokerage services, a broker may not do any of the following:

(a) Accept any fee or compensation related to the transaction from any person other than the broker's client, unless the broker has the written consent of all parties to the transaction.

(b) Act in a transaction on the broker's own behalf, on behalf of the broker's immediate family, or on behalf of any organization or business entity in which the broker has an interest, unless the broker has the written consent of all parties to the transaction.

(c) Except as provided in s. 452.19, refer, recommend or suggest to a party to the transaction the services of an individual or entity from which the broker may receive compensation for a referral or in which the broker has an interest, unless the broker has disclosed the fact that he or she may receive compensation or has disclosed his or her interest in the individual or entity providing the services.

(4) SUBAGENT'S DUTIES. (a) A subagent owes all persons to whom a broker is providing brokerage services in a transaction the duties specified in sub. (1) but does not owe the clients of the principal broker the duties under sub. (2).

(b) A subagent may not do any of the following:

1. Place the subagent's interests ahead of the interests of the clients of the principal broker in the transaction in which the subagent has been engaged by the principal broker.

2. Provide advice or opinions to parties in the transaction if providing the advice or opinions is contrary to the interests of the clients of the principal broker in the transaction in which the subagent has been engaged by the principal broker, unless required by law.

(5) DUTIES WITHOUT AGENCY OR SUBAGENCY RELATIONSHIP. If a broker is providing brokerage services to a person who is a party or a prospective party to a transaction, and the broker does not have an agency agreement with the person and is not a subagent of another broker in the transaction, then the broker owes the person the duties under sub. (1) and may not, unless required by law, provide advice or opinions relating to the transaction in which the person is receiving brokerage services if providing the advice or opinions is contrary to the interests of a party to a current or prospective transaction with the person receiving the brokerage services.

(6) WAIVER OF DUTIES. The duties imposed by subs. (1), (2) (a), (am), (b), and (c), (4), and (5) may not be waived. A client may waive, in part or in full, the broker's duty under sub. (2) (d), except that a waiver under this subsection is not effective unless the broker provides to the client a written disclosure containing all of the following:

(a) A copy of the text of sub. (2) (d) and s. 452.01 (5m), and a statement that, as a consequence of the client's waiver, the broker will have no legal duty to perform the duty imposed by sub. (2) (d).

(b) A statement that as a consequence of the client's waiver, the client may require the assistance of an attorney or another service provider to fulfill the client's goals and contractual duties in the transaction.

History: 1993 a. 127; 1995 a. 400; 2005 a. 87.

Cross−reference: See also ch. REEB 24, Wis. adm. code.

The New Real Estate Agency Law: Redefining the Role of Real Estate Brokers. Smith and Staff. Wis. Law. Oct. 1994.

The 'New' Chapter 452: Defining Real Estate Broker Practice. Leibsle. Wis. Law. June 2006.

452.134 Agency relationships; multiple representation relationships. (1) AGENCY RELATIONSHIP NOT REQUIRED. (a) Subject to par. (b), a broker may provide brokerage services to any person in a transaction, whether or not the broker has entered into an agency agreement with a party to the transaction or the broker has been engaged to provide brokerage services in the transaction as a subagent.

(b) A broker may not negotiate on behalf of a party to a transaction unless a party to the transaction is one of the following:

1. The broker's client.

2. A client of a principal broker who has engaged the broker as a subagent.

(2) MULTIPLE REPRESENTATION RELATIONSHIPS; CONSENT REQUIRED. A broker may not provide brokerage services in a multiple representation relationship unless all of the broker's clients in the multiple representation relationship have consented to a multiple representation relationship in writing.

(3) DESIGNATED AGENCY; CONSENT REQUIRED. (a) A broker in a multiple representation relationship may not engage in designated agency unless all of the broker's clients in the relationship have consented to designated agency in writing. A client may withdraw consent to designated agency by written notice to the broker at any time.

(b) If a broker is engaged in designated agency, the broker's employee who is negotiating on behalf of a client of the broker in the transaction may provide to the client on whose behalf the employee is negotiating information, opinions, and advice to assist the client in the negotiations, whether or not the information, opinions, and advice place the interests of one of the broker's clients ahead of the interests of another client of the broker.

(4) MULTIPLE REPRESENTATIONS RELATIONSHIP WITHOUT DESIGNATED AGENCY. If a broker's client in a multiple representation relationship does not consent to designated agency or withdraws consent to designated agency, the broker and the broker's employees may not place the interests of any client ahead of the interests of any other in the negotiations.

History: 2005 a. 87.

The 'New' Chapter 452: Defining Real Estate Broker Practice. Leibsle. Wis. Law. June 2006.

452.135 Disclosure of duties. (1) (a) A broker may not negotiate on behalf of a party who is not the broker's client unless the broker provides to the party a copy of the following written disclosure statement:

BROKER DISCLOSURE TO CUSTOMERS

You are a customer of the broker. The broker is either an agent of another party in the transaction or a subagent of another broker who is the agent of another party in the transaction. The broker, or a salesperson acting on behalf of the broker, may provide brokerage services to you. Whenever the broker is providing brokerage services to you, the broker owes you, the customer, the following duties:

The duty to provide brokerage services to you fairly and honestly.

The duty to exercise reasonable skill and care in providing brokerage services to you.

The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless disclosure of the information is prohibited by law.

The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the information is prohibited by law.

The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential information or the confidential information of other parties.

The duty to safeguard trust funds and other property the broker holds.

The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

Please review this information carefully. A broker or salesperson can answer your questions about brokerage services, but if

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you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax advisor, or home inspector.

This disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain−language summary of a broker's duties to a customer under section 452.133 (1) of the Wisconsin statutes.

(b) If a broker is providing brokerage services as a subagent to a principal broker, the broker shall provide a copy of the written disclosure statement under par. (a) to any person who is not the principal broker's client and who receives brokerage services from the broker within the scope of the agreement between the broker and the principal broker.

(2) (a) Except as provided in par. (b), a broker shall provide to a client a copy of the following written disclosure statement not later than the time the broker enters into an agency agreement with the client:

BROKER DISCLOSURE TO CLIENTS

Under Wisconsin law, a broker owes certain duties to all parties to a transaction:

The duty to provide brokerage services to you fairly and honestly.

The duty to exercise reasonable skill and care in providing brokerage services to you.

The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless disclosure of the information is prohibited by law.

The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the information is prohibited by law.

The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential information or the confidential information of other parties.

The duty to safeguard trust funds and other property the broker holds.

The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

Because you have entered into an agency agreement with a broker, you are the broker's client. A broker owes additional duties to a client.

The broker will provide, at your request, information and advice on real estate matters that affect your transaction, unless you release the broker from this duty. The broker must provide you with all material facts affecting the transaction, not just adverse facts.

The broker will fulfill the broker's obligations under the agency agreement and fulfill your lawful requests that are within the scope of the agency agreement.

The broker will negotiate for you, unless you release the broker from this duty.

The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by law, give information or advice to other parties who are not the broker's clients, if giving the information or advice is contrary to your interests.

If you become involved in a transaction in which another party is also the broker's client (a "multiple representation relationship"), different duties may apply.

MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY

A multiple representation relationship exists if a broker has an agency agreement with more than one client who is a party in the same transaction. In a multiple representation relationship, if all of the broker's clients in the transaction consent, the broker may provide services to the clients through designated agency.

Designated agency means that different salespersons employed by the broker will negotiate on behalf of you and the other client or clients in the transaction, and the broker's duties will remain the same. Each salesperson will provide information, opinions, and advice to the client for whom the salesperson is negotiating, to assist the client in the negotiations. Each client will be able to receive information, opinions, and advice that will assist the client, even if the information, opinions, or advice gives the client advantages in the negotiations over the broker's other clients. A salesperson will not reveal any of your confidential information to another party unless required to do so by law.

If a designated agency relationship is not in effect you may authorize or reject a multiple representation relationship. If you authorize a multiple representation relationship the broker may provide brokerage services to more than one client in a transaction but neither the broker nor any of the broker's salespersons may assist any client with information, opinions, and advice which may favor the interests of one client over any other client. If you do not consent to a multiple representation relationship the broker will not be allowed to provide brokerage services to more than one client in the transaction.

INITIAL ONLY ONE OF THE THREE LINES BELOW:

_____I consent to designated agency.

_____I consent to multiple representation relationships, but I do not consent to designated agency.

_____I reject multiple representation relationships.

NOTE: YOU MAY WITHDRAW YOUR CONSENT TO DESIGNATED AGENCY OR TO MULTIPLE REPRESENTATION RELATIONSHIPS BY WRITTEN NOTICE TO THE BROKER AT ANY TIME. YOUR BROKER IS REQUIRED TO DISCLOSE TO YOU IN YOUR AGENCY AGREEMENT THE COMMISSION OR FEES THAT YOU MAY OWE TO YOUR BROKER. IF YOU HAVE ANY QUESTIONS ABOUT THE COMMISSION OR FEES THAT YOU MAY OWE BASED UPON THE TYPE OF AGENCY RELATIONSHIP YOU SELECT WITH YOUR BROKER YOU SHOULD ASK YOUR BROKER BEFORE SIGNING THE AGENCY AGREEMENT.

SUBAGENCY

The broker may, with your authorization in the agency agreement, engage other brokers who assist your broker by providing brokerage services for your benefit. A subagent will not put the subagent's own interests ahead of your interests. A subagent will not, unless required by law, provide advice or opinions to other parties if doing so is contrary to your interests.

Please review this information carefully. A broker or salesperson can answer your questions about brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax advisor, or home inspector.

This disclosure is required by s. 452.135 of the Wisconsin statutes and is for information only. It is a plain−language summary of a broker's duties to you under section 452.133 (3) of the Wisconsin statutes.

(b) If a client enters into an agency agreement with a broker to receive brokerage services related to real estate primarily intended for use as a residential property containing one to 4 dwelling units, and the written disclosure statement under par. (a) is not incorporated into the agency agreement, the broker shall request the client's signed acknowledgment that the client has received a copy of the written disclosure statement.

History: 1993 a. 127; 2005 a. 87; 2007 a. 97.

The 'New' Chapter 452: Defining Real Estate Broker Practice. Leibsle. Wis. Law. June 2006.

452.138 Brokers providing services in more than one transaction. A broker may provide brokerage services simultaneously to more than one party in different transactions unless the broker agrees with a client that the broker is to provide brokerage services only to that client. If the broker and a client agree that the broker is to provide brokerage services only to that client, the agency agreement shall contain a statement of that agreement.

History: 1993 a. 127; 2005 a. 87.

Cross−reference: See also ch. REEB 24, Wis. adm. code.

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452.139 Changes in common law duties and liabilities of brokers and parties. (1) COMMON LAW DUTIES OF BROKER. The duties of a broker specified in this chapter or in rules promulgated under this chapter shall supersede duties or obligations under common law to the extent that those common law duties or obligations are inconsistent with the duties specified in this chapter or in rules promulgated under this chapter.

(2) MISREPRESENTATION BY BROKER. (a) A client is not liable for a misrepresentation made by a broker in connection with the broker providing brokerage services, unless the client knows or should have known of the misrepresentation or the broker is repeating a misrepresentation made to him or her by the client.

(b) A broker who is providing brokerage services to a client and who retains another broker to provide brokerage services to that client is not liable for a misrepresentation made by the other broker, unless the broker knew or should have known of the other broker's misrepresentation or the other broker is repeating a misrepresentation made to him or her by the broker.

(c) Nothing in this subsection limits the liability of a broker under s. 452.12 (3) for misrepresentations made by an employee who is a broker. Nothing in this subsection limits the liability of a client for a misrepresentation that the client makes in connection with brokerage services.

History: 1993 a. 127; 2001 a. 16; 2005 a. 87.

Cross−reference: See also ch. REEB 24, Wis. adm. code.

452.14 Investigation and discipline of licensees. (1) The board shall, upon motion of the secretary or his or her designee or upon its own determination, conduct investigations and, as appropriate, may hold hearings and make findings, if the board or the department receives credible information that a broker, salesperson, or time−share salesperson has violated this chapter or any rule promulgated under this chapter.

(2) The board may commence disciplinary proceedings on any matter under investigation concerning a licensee or registrant.

(3) Disciplinary proceedings shall be conducted by the board according to rules adopted under s. 440.03 (1). The board may revoke, suspend or limit any broker's, salesperson's or time−share salesperson's license or registration, or reprimand the holder of the license or registration, if it finds that the holder of the license or registration has:

(a) Made a material misstatement in the application for a license or registration, or in any information furnished to the board or department;

(b) Made any substantial misrepresentation with reference to a transaction injurious to a seller or purchaser in which the broker, salesperson or time−share salesperson acts as agent;

(c) Made any false promises of a character such as to influence, persuade or induce the seller or purchaser to his or her injury or damage;

(d) Pursued a continued and flagrant course of misrepresentation or made false promises through agents or salespersons or advertising;

(f) Accepted from any person except the broker's, salesperson's, or time−share salesperson's employer, if the broker, salesperson, or time−share salesperson is employed as a salesperson or time−share salesperson by a broker, a commission or valuable consideration as a salesperson or time−share salesperson for the performance of any act specified in this chapter or as compensation for referring a person to another broker, salesperson, or time−share salesperson or to any other person in connection with a transaction;

(g) Represented or attempted to represent a broker other than the employer, without the express knowledge and consent of the employer;

(h) Failed, within a reasonable time, to account for or remit any moneys coming into the broker's, salesperson's or time−share salesperson's possession which belong to another person;

(i) Demonstrated incompetency to act as a broker, salesperson or time−share salesperson in a manner which safeguards the interests of the public;

(j) Paid or offered to pay a commission or valuable consideration to any person for acts or services in violation of this chapter;

(jm) Intentionally encouraged or discouraged any person from purchasing or renting real estate in a particular area on the basis of race. If the board finds that any broker, salesperson or time−share salesperson has violated this paragraph, the board shall, in addition to any temporary penalty imposed under this subsection, apply the penalty provided in s. 452.17 (4);

(k) Been guilty of any other conduct, whether of the same or a different character from that specified herein, which constitutes improper, fraudulent or dishonest dealing;

(L) Violated any provision of this chapter or any rule promulgated under this chapter;

(m) Failed to use forms approved under s. 452.05 (1) (b); or

(n) Treated any person unequally solely because of sex, race, color, handicap, national origin, ancestry, marital status, lawful source of income, or status as a victim of domestic abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u).

(4) If a broker is a business entity it shall be sufficient cause for reprimand or for the limitation, suspension or revocation of a broker's license that any business representative of the business entity, or anyone who has a financial interest in or is in any way connected with the operation of a brokerage business, has been guilty of any act or omission which would be cause for refusing a broker's license to such person as an individual.

(4m) In addition to or in lieu of a reprimand, the issuance of a private letter of warning or a revocation, limitation or suspension of a license or certificate of registration under sub. (3), the board may do any of the following:

(a) Assess against a person who is licensed or registered under this chapter a forfeiture of not more than $1,000 for each violation enumerated under sub. (3).

(b) Require a licensee to successfully complete education or training, in addition to any education or training required for licensure or registration or for renewal of a license or certificate under this chapter, as a condition of continued licensure or registration or reinstatement of a license or certificate.

(5) The department may seek judicial review under ch. 227 of any final decision of the board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the board, the attorney general may represent the board. If the attorney general does not 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: 1981 c. 94, 391; 1983 a. 27 s. 2202 (44); 1983 a. 354; 1985 a. 305; 1987 a. 399; 1989 a. 307, 341, 359; 1991 a. 32, 163; 1993 a. 127; 1995 a. 400; 2005 a. 87; 2009 a. 95; 2011 a. 32.

Cross−reference: See also chs. REEB 15, 16, and 24, Wis. adm. code.

Real estate brokers may engage in guaranteed sales plans if there is full disclosure and the broker does not engage in fraud, misrepresentation, or improper dealing. 61 Atty. Gen. 3.

Provisions in Executive Order 67 (1973), with respect to duty of real estate brokers to advise prospective purchasers of floodplain zoning status of property, do not constitute a new standard but suggest a course of action that the real estate examining board might take. The action to be taken would depend on the facts in each case. 63 Atty. Gen. 236.

Neither s. 440.20, 452.10 (2), 1977 stats., nor the rules of the department of regulation and licensing require the board to hold a hearing when a citizen files a verified complaint with the board requesting institution of disciplinary proceedings against a licensee. 68 Atty. Gen. 30.

452.15 Ineligibility. No license or certificate of registration may be issued under this chapter to any person whose license or certificate under this chapter has been revoked until the expiration of a period determined in each case by the board or, in the case of revocation under s. 452.17 (4) (a) 2., a period determined in each case by the board of not less than 5 years from the date the revocation became finally effective.

History: 1981 c. 94; 1983 a. 354; 1989 a. 341.

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452.17 Penalties. (1) Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as a broker or salesperson in this state without a license under this chapter shall be prosecuted by the district attorney in the county where the violation occurs or by the attorney general and may be fined not more than $1,000 or imprisoned not more than 6 months or both.

(2) Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as, a time−share salesperson in this state without being registered with the board shall be prosecuted by the district attorney in the county where the violation occurs and may be fined not less than $25 nor more than $200 or imprisoned not less than 10 days nor more than 6 months or both.

(3) Any person who otherwise violates any provision of this chapter may be fined not more than $1,000 or imprisoned for not more than 6 months or both.

(4) (a) If the board finds that any broker, salesperson or time−share salesperson has violated s. 452.14 (3) (jm), the board:

1. Shall, for the first offense, suspend the license or registration of the broker, salesperson or time−share salesperson for not less than 90 days.

2. Shall, for the 2nd offense, revoke the license or registration of the broker, salesperson or time−share salesperson.

(b) This penalty may be imposed in addition to any penalty imposed under this chapter or s. 66.1011 or 106.50.

History: 1981 c. 94; 1983 a. 354; 1987 a. 399; 1989 a. 95, 307, 341; 1995 a. 27; 1999 a. 82; 1999 a. 150 s. 672; 2011 a. 32.

452.18 Court review. Except as provided in s. 73.0301 (2) (b) 1. a. and 2., orders of the board and department shall be subject to review as provided in ch. 227.

History: 1981 c. 94; 1997 a. 237.

452.19 Fee−splitting. No licensed broker may pay a fee or a commission or any part thereof for performing any act specified in this chapter or as compensation for a referral or as a finder's fee to any person who is not licensed or registered under this chapter or who is not regularly and lawfully engaged in the real estate brokerage business in another state, a territory or possession of the United States or a foreign country.

History: 1981 c. 94; 1983 a. 464; 1985 a. 128; 1989 a. 307.

Under s. 452.03 an agreement to pay a real estate brokerage commission to a person not licensed as a broker is void at its inception. Using a licensed broker who provides no actual services as a conduit for a fee to an unlicensed person does not create a co−brokerage arrangement authorized by s. 452.19. Badger III Ltd. v. Howard, Needles, Tammen & Bergendoff, 196 Wis. 2d 891, 539 N.W.2d 904 (Ct. App. 1995), 94−2531.

452.20 Limitation on actions for commissions. No person engaged in the business or acting in the capacity of a broker, salesperson or time−share salesperson within this state may bring or maintain an action in the courts of this state for the collection of a commission or compensation for the performance of any act mentioned in this chapter without alleging and proving that he or she was a duly licensed broker, salesperson or registered time−share salesperson at the time the alleged cause of action arose.

History: 1981 c. 94; 1987 a. 399; 1989 a. 56.

A foreign corporation that contracts to sell a radio station without being licensed in this state cannot sue for its commission. The licensing requirement is not an unlawful burden on interstate commerce. Chapman Co. v. Service Broadcasting Corp. 52 Wis. 2d 32, 187 N.W.2d 794.

The prohibition against paying a commission to an unlicensed person acting as a broker is absolute and not conditioned on the innocence or lack of sophistication of the other contracting parties. Because a contract for a commission with a person not licensed as a broker is void from its inception, estoppel is not available to avoid the effect of the statute. Greenlee v. Rainbow Auction/Realty Co. 202 Wis. 2d 653, 553 N.W.2d 257 (Ct. App. 1996), 95−1463.

This section not applicable since broker as owners' agent was not attempting to negotiate the lease when conferring with his alleged principal in Wisconsin and therefore was not acting in the capacity of a broker in Wisconsin. Negotiation of lease occurred when broker met and conferred with prospective lessee either in Illinois or Tennessee. Paulson v. Shapiro, 490 F.2d 1.

Chapter 452 contains no provision giving a client of an unlicensed broker the right to recover a fee voluntarily paid or to restitution on the grounds that there was an illegal contract. Schlueter v. Latek, 821 F. Supp. 2d 1079 (2011).

452.21 Compensation presumed. In any prosecution for violation of this chapter, proof that a person acted as a broker, agent, salesperson or time−share salesperson is prima facie proof that compensation therefor was received or promised.

History: 1981 c. 94; 1987 a. 399.

452.22 Certifications as evidence. (1) Copies of all documents, orders, resolutions and certificates made, executed or granted by the department or board, and of all papers filed with the department when certified by the secretary or his or her designee, under the official seal, shall be received in evidence in all cases the same as the originals.

(2) The certificate of the chairperson of the board or his or her designee to the effect that a specified individual or business entity is not or was not on a specified date the holder of a broker's, salesperson's, or time−share salesperson's license or registration, or that a specified license or registration was not in effect on a date specified, or as to the issuance, limitation, suspension, or revocation of any license or registration or the reprimand of any license or registration holder, the filing or withdrawal of any application or its existence or nonexistence, is prima facie evidence of the facts stated in the certificate for all purposes in any action or proceedings.

History: 1981 c. 94; 1987 a. 399; 1995 a. 400; 2011 a. 32.

452.23 Disclosures, investigations and inspections by brokers and salespersons. (1) A broker or salesperson may not disclose to any person in connection with the sale, exchange, purchase or rental of real property information, the disclosure of which constitutes unlawful discrimination in housing under s. 106.50 or unlawful discrimination based on handicap under 42 USC 3604, 3605, 3606 or 3617.

(2) A broker or salesperson is not required to disclose any of the following to any person in connection with the sale, exchange, purchase or rental of real property:

(a) That the property was the site of a specific act or occurrence, if the act or occurrence had no effect on the physical condition of the property or any structures located on the property.

(b) Except as provided in sub. (3), information relating to the physical condition of the property or any other information relating to the real estate transaction, if a written report that discloses the information has been prepared by a qualified 3rd party and provided to the person. In this paragraph, "qualified 3rd party" means a federal, state or local governmental agency, or any person whom the broker, salesperson or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the 3rd party in order to prepare the written report.

(c) The location of any adult family home, as defined in s. 50.01 (1), community−based residential facility, as defined in s. 50.01 (1g), or nursing home, as defined in s. 50.01 (3), in relation to the location of the property.

(d) Except as provided in s. 452.24, any information related to the fact that a particular person is required to register as a sex offender under s. 301.45 or any information about the sex offender registry under s. 301.45.

(3) A broker or salesperson shall disclose to the parties to a real estate transaction any facts known by the broker or salesperson that contradict any information included in a written report described under sub. (2) (b).

(4) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a broker or salesperson shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson under this chapter.

History: 1989 a. 341; 1995 a. 27; 1999 a. 82, 89.

An independent inspection by a qualified third party operates to relieve a broker from liability for disclosures related to the physical condition of the property. Conell v. Coldwell Banker, 181 Wis. 2d 894, 512 N.W.2d 239 (Ct. App. 1994).

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Sub. (2) (b) relieves a broker from the obligation to disclose information disclosed in a 3rd party report. Sub. (2) (b) does not apply to a separate affirmative act of negligence and does not preclude a broker's liability for a breach of other duties. Johnson v. Neuville, 226 Wis. 2d 365, 595 N.W.2d 100 (Ct. App. 1999), 98−1680.

452.24 Disclosure duty; immunity for providing notice about the sex offender registry. (1) If, in connection with the sale, exchange, purchase or rental of real property, a licensee receives a request from a person to whom the licensee is providing brokerage services in connection with the sale, exchange, purchase or rental for information related to whether a particular person is required to register as a sex offender under s. 301.45 or any other information about the sex offender registry under s. 301.45, the licensee has a duty to disclose such information, if the licensee has actual knowledge of the information.

(2) Notwithstanding sub. (1), the broker or salesperson is immune from liability for any act or omission related to the disclosure of information under sub. (1) if the broker or salesperson in a timely manner provides to the person requesting the information written notice that the person may obtain information about the sex offender registry and persons registered with the registry by contacting the department of corrections. The notice shall include the appropriate telephone number and Internet site of the department of corrections.

History: 1999 a. 89.

Chapter REEB 11

AUTHORITY AND DEFINITIONS

REEB 11.01 Authority.
REEB 11.02 Definitions.

Note: Chapter REB 1 as it existed on April 30, 1972 was repealed and a new chapter REB 1 was created, Register, April, 1972, No. 196, effective May 1, 1972. Renumbered to be chapter RL 11, effective March 1, 1983. Chapter RL 11 was renumbered chapter REEB 11 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

Note: Chapters RL 11 to 26 were renumbered REEB chs. 11 to 26 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671. The real estate examining board retained the chapter numbers previously assigned to these chapters by the department of safety and professional services. There are no chapters REEB 1 to 10.

REEB 11.01 Authority. The rules in chs. REEB 11 to 26 are adopted by the board pursuant to ss. 227.11 (2), 440.03 (1) and 452.07, Stats.

History: Cr. Register, April, 1972, No. 196, eff. 5−1−72; renum. from REB 1.01 and am. Register, February, 1983, No. 326, eff. 3−1−83; am. Register, July, 1998, No. 511, eff. 8−1−98; correction made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

REEB 11.02 Definitions. As used in chs. REEB 11 to 26:

(1) "Board" means the real estate examining board.

(2) "Business entity" has the meaning under s. 452.01 (3j), Stats.

(3) "Business representative" has the meaning under s. 452.01 (3k), Stats.

(4) "Closing statement" means a detailed computation of the balance of the purchase price due to the seller and the balance of the purchase price due from the buyer at the time of closing.

(5) "Department" means the department of safety and professional services.

(6) "Licensee" has the meaning under s. 452.01 (5), Stats.

History: Cr. Register, April, 1972, No. 196, eff. 5−1−72; renum. from REB 1.04 and am. Register, February, 1982, No. 326, eff. 3−1−83; am. (intro.), renum. (2) to be (5), cr. (2), (3), (4) and (6), Register, July, 1998, No. 511, eff. 8−1−98; correction in (intro.), (1), (5) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

The Wisconsin Administrative Code on this web site is current through the last published Wisconsin Register. See also Are the Codes on this Website Official?

Chapter REEB 12

APPLICATIONS

REEB 12.005 Authority.
REEB 12.01 Applications.
REEB 12.015 Application requirements.
REEB 12.02 Examinations.
REEB 12.025 Review of examinations and examination results.
REEB 12.026 Cheating on examination.
REEB 12.03 Time for completing licensure requirements.
REEB 12.04 Renewal after license expiration.

Note: Chapter REB 2 as it existed on April 30, 1972 was repealed and a new chapter REB 2 was created, Register, April, 1972, No. 196, effective May 1, 1972. Renumbered to be chapter RL 12, effective March 1, 1983. **Chapter RL 12 was renumbered chapter REEB 12 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.**

REEB 12.005 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 440.05, 440.06, 440.07, 440.08, 452.07, 452.09, 452.10, 452.11 and 452.12, Stats.

History: Cr. Register, July, 1998, No. 511, eff. 8−1−98.

REEB 12.01 Applications. (1) GENERAL. (a) *Forms.* Applications for licenses and accompanying documents required by the provisions of ch. 452, Stats., and the rules of the board shall be made on forms provided by the department.

(b) *Action on completed applications.* The board shall review and make a determination on an original application for a license within 60 business days after a completed application is received by the department. An application is completed when all materials necessary to make a determination on the application and all materials requested by the board have been received.

(c) *Verification.* 1. 'Individuals.' All applications for a license as an individual shall be affirmed or verified by the applicant.

2. 'Business entities'. Applications for a license made by a business entity must be verified by a business representative of the business entity.

Note: Applications are available upon request to the department offices located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(e) *Fees prepaid.* No action shall be taken on any application until the prescribed fees are paid and deposited at the office of the department.

(f) *Previously licensed brokers and salespersons.* No action shall be taken on any new application of an applicant who has previously been licensed by the board until the applicant furnishes sufficient proof to the board that the applicant has not acted as a salesperson or broker since the expiration of his or her license. The board may in its discretion waive this requirement.

(2) NEW APPLICATIONS. (a) *Non−resident brokers and salespersons.* No application for a real estate broker's or salesperson's license from any person not a resident of the state of Wisconsin may be processed prior to receipt by the department of an irrevocable consent to be sued as specified in s. 452.11, Stats.

(b) *Minors.* No action shall be taken on any new application for a broker's or salesperson's license received from any applicant unless said applicant is a person of the age of 18 years or over.

History: Cr. Register, April, 1972, No. 196, eff. 5−1−72; am. (2) (b), Register, July, 1972, No. 199, eff. 8−1−72; renum. from REB 2.01, r. (1) (b), renum. (1) (c) and (d) to be (1) (b) and (c), Register, February, 1981, No. 302, eff. 3−1−81; renum. from REB 2.02 and am. (1) (a), (c) 2., (e) and (f) and (2), Register, February, 1983, No. 326, eff. 3−1−83; am. (1) (a), (c) and (2) (a), r. and recr. (1) (b), Register, July, 1998, No. 511, eff. 8−1−98; **correction in (1) (a), (b), (f) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.**

REEB 12.015 Application requirements. (1) EDUCATIONAL REQUIREMENTS. Each applicant for an original real estate broker's license or an original real estate salesperson's license shall submit evidence that the educational requirements in ch. REEB 25 were completed before taking the licensing examination.

(2) BROKER'S ELIGIBILITY REQUIREMENT. An applicant for examination to obtain an original real estate broker's license shall complete the education requirements specified in s. REEB 25.02 (1) and shall either hold a Wisconsin real estate salesperson's license or shall have passed the salesperson's examination pursuant to s. REEB 12.02.

History: Cr. Register, February, 1987, No. 374, eff. 6−1−87; am. (1), r. and recr. (2), Register, January, 1992, No. 433, eff. 2−1−92; rn. (2) (a) 1. to be (2) (a), r. (2) (a) 2., Register, September, 1993, No. 453, eff. 10−1−93; **correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

REEB 12.02 Examinations. (1) WRITTEN EXAMINATIONS. Each applicant for examination to obtain a broker's or salesperson's license shall read and write a comprehensive examination in English, testing that person's competency to transact the business of a real estate broker or salesperson. The examination shall be in conformity with s. 452.09 (3), Stats., and may consist of one or 2 parts. If the examination consists of 2 parts, they shall be designated as the uniform part and the state part, and are described as follows:

(a) Uniform part measures knowledge and skills relevant to the general practices and principles of real estate that are common to or "uniform" among all licensing jurisdictions.

(b) State part contains questions dealing with real estate laws, rules, and regulations, and other aspects of real estate practices appropriate to the state of Wisconsin.

(2) COMPETENCY. (a) The score required to pass an examination, or each part of a 2−part examination, shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. The board shall make the determination after consultation with subject matter experts who have received a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.

(b) A first−time applicant who passes one part of a 2−part examination shall be conditionally credited with the part on which the passing grade was received, and may, upon application, be reexamined on the part failed at any examination administered during the 12 months following the first examination. A person who does not pass the part retaken at one of the examinations administered during the 12 months following the first examination shall revert to the status of a new applicant, and shall rewrite both parts, if reapplication is made. In addition to a passing grade, the board may require further supplemental proof of competency. In all cases, a failing grade received on the written examination shall be controlling on the question of competency.

(3) EXAMINATION REQUIREMENTS FOR APPLICANTS LICENSED IN ANOTHER STATE. (a) An applicant for a license as a salesperson who submits proof to the board that he or she held a salesperson's license in another state at any time during the 2 years immediately preceding the date of application in Wisconsin is required to take and pass either a single−part salesperson's examination or only the state part of a 2−part salesperson's examination, depending on whether a single−part or a 2−part examination is made available by the department.

(b) An applicant for a license as a broker who does not hold a salesperson's license in Wisconsin and who submits proof to the board that he or she held a broker's license in another state within 2 years prior to the date of application in Wisconsin is required to complete the education requirement in s. REEB 25.02 (1) and take and pass only a single−part salesperson's examination or only the state part of a 2−part salesperson's examination, depending on whether a single−part or a 2−part examination is made available by the department, and either a single−part broker's examination or only the state part of a 2−part broker's examination, depending on whether a single−part or a 2−part examination is made available by the department.

(c) An applicant for a license as a broker who holds a salesperson's license in Wisconsin and who submits proof to the board that he or she holds a broker's license in another state within 2 years prior to the date of application in Wisconsin is required to take and pass either a single−part broker's examination or only the state part of a 2−part broker's examination, depending on whether a single−part or a 2−part examination is made available by the department.

Note: An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.

History: Cr. Register, April, 1972, No. 196. 5−1−72; r. (4) renum. (5) to be (4), Register, November, 1974, No. 227, eff. 12−1−74. emerg. cr. (5), eff. 5−1−75; cr. (5), Register, June, 1975, No. 234, eff. 7−1−75; am. (1) and (2), Register, June, 1979, No. 282, eff. 7−1−79; renum. from REB 2.03, am. (2), (4) (a) and (5) (g), Register, February, 1981, No. 302, eff. 3−1−81; r. (4) (b), renum. (4) (c) to be (4) (b), Register, December, 1981, No. 312, eff. 1−1−82; renum. from REB 2.02 and am. (1) (intro.) and (2) to (5), Register, February, 1983, No. 326, eff. 3−1−83; r. and recr. (3), Register, August, 1983, No. 332, eff. 9−1−83; r. (4) (a), Register, November, 1985, No. 359, eff. 12−1−85; am. (1) and (2), r. and recr. (3), Register, January, 1992, No. 433, eff. 2−1−92; am. (1) (intro.), r. and recr. (2), r. (4) and (5), Register, July, 1998, No. 511, eff. 8−1−98; **correction in (2) (a), (b), (3) (a), (b) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.**

REEB 12.025 Review of examinations and examination results. (1) REVIEW. All applicants shall be offered the opportunity to review their examinations and make written comments and objections at the time and place that they take the examination.

(2) REPORTS. All applicants who obtain a failing grade shall receive, for facilitating further study, a report detailing the results in the major content areas of the examination.

Note: This section interprets or implements s. 452.09 (3), Stats.

History: Cr. Register, December, 1976, No. 252, eff. 1−1−77; r. and recr. Register, December, 1978, No. 276, eff. 1−1−79; renum. from REB 2.035, Register, February, 1981, No. 302, eff. 3−1−81; renum. from REB 2.025, Register, February, 1983, No. 326, eff. 3−1−83; r. (3), Register, July, 1998, No. 511, eff. 8−1−98.

REEB 12.026 Cheating on examination. An applicant may not give or receive unauthorized assistance during an examination, violate the rules of conduct of the examination, or otherwise act dishonestly. The action taken by the board for a violation of this section shall be related to the seriousness of the offense. An action may include withholding the score of the applicant, entering a failing grade for the applicant, and suspending the ability of the applicant to sit for the next scheduled examination after the examination at which the conduct occurred.

History: Cr. Register, July, 1998, No. 511, eff. 8−1−98; **correction made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.**

REEB 12.03 Time for completing licensure requirements. An applicant for a broker's or salesperson's license who successfully completes both the uniform and state parts of the examination, as provided in this chapter, has one year following the date of examination to complete all other requirements for licensure. No license shall be granted until all requirements are met. If the applicant fails to complete the requirements within the one−year period, he or she shall reapply and successfully complete the examination before a license may be granted.

History: Cr. Register, June, 1982, No. 318, eff. 7−1−82; renum. from REB 2.03, Register, February, 1983, No. 326, eff. 3−1−83.

REEB 12.04 Renewal after license expiration. (1) LESS THAN 5 YEARS. If an applicant files an application for renewal of the applicant's real estate license with the department less than 5 years after the renewal date, as defined in s. 440.01 (1) (dm), Stats., and the applicant is not registered as an inactive licensee, the applicant shall pay the applicable renewal fee and penalty fee specified in s. 440.08, Stats., and provide evidence of having satisfied the continuing education required by s. 452.12 (5), Stats., in one of the following manners:

(a) The applicant shall either provide proof of having successfully completed the classroom education which was required during the biennium preceding the date of renewal of the applicant's license, provide proof of having successfully passed the test−out examination which was administered during the biennium preceding the date of renewal of the applicant's license, or provide proof of having successfully completed any 8 of the 15 hours of education in s. REEB 25.03 (3) (h) and the 4 hours of education in s. REEB 25.03 (3) (m), or of having successfully completed the educational program in s. REEB 25.035 (2). In this paragraph "successfully completed" means passing an examination pursuant to s. REEB 25.066 (6) (d).

(c) The applicant shall also before the next renewal date satisfy the continuing education required of all licensees during the biennium in which the applicant renews his or her license.

(2) MORE THAN 5 YEARS. If an applicant files an application for renewal of a real estate license 5 or more years after the renewal date and the applicant is not registered as an inactive licensee, the applicant shall pay the late renewal fee specified in s. 440.08 (3), Stats., the examination fee specified in s. 440.05 (1) (b), Stats., and satisfy education and examination requirements, as follows:

(a) *Education requirements.* 1. Except as provided in subd. 3., an applicant for a broker's license shall satisfy requirements specified in any one of the following: s. REEB 25.02 (1) (b), (c), or (2). An applicant who obtains classroom education pursuant to s. REEB 25.02 (2) must complete the education within 5 years preceding the date of the application for license.

2. Except as provided in subd. 3., an applicant for a salesperson's license shall satisfy requirements in s. REEB 25.03. An applicant must complete the education within 5 years preceding the date of application for license.

3. An applicant who has held a real estate license in another licensing jurisdiction within the 2 years prior to filing an application for renewal is not required to obtain any education described in subds. 1. and 2.

4. An applicant completing the education described in subds. 1. and 2. satisfies the requirements in s. 452.12 (5) (c), Stats.

(b) *Examination requirements.* 1. An applicant for a broker's license shall successfully pass both the salesperson's and the broker's examination pursuant to s. REEB 12.02.

2. An applicant for a salesperson's license shall successfully pass the salesperson's examination pursuant to s. REEB 12.02.

Note: The applicant shall apply to and pay the cost of the examination directly to the testing agency under contract with the department for administration of the examination pursuant to s. 440.07 (2), Stats.

History: Emerg. cr. 6−16−87; cr. Register, December, 1987, No. 384, eff. 1−1−88; r. and recr. Register, March, 1990, No. 411, eff. 4−1−90; r. and recr., Register, September, 1993, No. 453, eff. 10−1−93; am. (2) (intro.), cr. (2) (a) 4., Register, July, 1998, No. 511, eff. 8−1−98; am. (1) (a), r. (1) (b), Register, August, 1999, No. 524, eff. 9−1−99; **correction in (1) (a), (2) (a) 1., 2., (b) 1., 2. made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

Chapter REEB 15

BROKER'S OBLIGATION TO FURNISH COPIES AND MAINTAIN RECORDS

REEB 15.01 Authority.
REEB 15.02 Copies of documents.
REEB 15.03 Copies of closing statements.
REEB 15.04 Retention of records.

Note: Chapter REB 6 as it existed on April 30, 1972 was repealed and a new chapter REB 6 was created, Register, April, 1972, No. 196, effective May 1, 1972. Renumbered to be ch. RL 15, effective March 1, 1983. Chapter RL 15 as it existed on November 30, 1985 was repealed and a new chapter RL 15 was created effective December 1, 1985. **Chapter RL 15 was renumbered chapter REEB 15 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.**

REEB 15.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 452.07 and 452.14 (3) (h) and (i), Stats.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389.

REEB 15.02 Copies of documents. (1) A broker or salesperson shall promptly provide an exact and complete copy of any document utilized in real estate practice to any person who has signed the document.

(2) A broker or salesperson shall promptly distribute to the following persons exact and complete copies of offers to purchase, amendments to contracts of sale, counter−offers, exchange agreements, or grants of option which have been accepted and signed by all parties:

(a) The seller.

(b) The buyer.

(c) The listing broker.

(d) The selling broker.

(3) A broker or salesperson shall promptly distribute an exact and complete copy of a lease which has been accepted and signed by all parties to the tenant when the tenant leases the property and to the landlord upon the landlord's request.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85.

REEB 15.03 Copies of closing statements. (1) At the time of closing a real estate transaction, the listing broker or the broker's designee shall ensure that a complete copy of the seller's portion of the closing statement is delivered to the seller and a complete copy of the buyer's portion of the closing statement is delivered to the buyer. These closing statements shall accurately account for all funds received and paid by the broker in connection with the transaction.

(2) If a transaction is handled through escrow and the escrow holder renders a closing statement, the broker shall assure that funds which the broker has received or paid as part of the transaction are properly accounted for.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85.

REEB 15.04 Retention of records. A broker shall retain for at least 3 years exact and complete copies of all listing contracts, offers to purchase, leases, closing statements, deposit receipts, cancelled checks, trust account records and other documents or correspondence received or prepared by the broker in connection with any transaction. The retention period shall run from the date of closing of the transaction or, if the transaction has not been consummated, from the date of listing. The broker shall make these records available for inspection and copying by the board. If the records are retained outside this state, the broker shall, upon request of the board, promptly send exact and complete copies to the department.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; **correction made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.**

Chapter REEB 16

APPROVED FORMS AND LEGAL ADVICE

REEB 16.01 Authority.
REEB 16.02 Definitions.
REEB 16.03 Approved forms.
REEB 16.04 When to utilize approved forms.
REEB 16.05 Legal advice and practice of law.
REEB 16.06 How to use approved forms.
REEB 16.07 Violation of this chapter.

Note: Chapter RL 16 as it existed on March 31, 1986 was repealed and a new chapter RL 16 was created, effective April 1, 1986. **Chapter RL 16 was renumbered chapter REEB 16 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.**

REEB 16.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 452.05 (1) (b), 452.07, and 452.14 (3) (m), Stats.

History: Cr. Register, March, 1986, No. 363, eff. 4−1−86; correction made under s. 13.93 (2m) (b) 7, Stats., Register, May, 1988, No. 389.

REEB 16.02 Definitions. (1) "Approved form" means a contractual or conveyance form which is either prepared and approved by the board, pursuant to s. 452.05 (1) (b), Stats., or approved in s. REEB 16.03.

(2) "Exclusive agency listing" means a written listing agreement containing all of the elements of an exclusive right to sell listing, except that the owner retains the right to sell the property himself or herself without owing the listing broker a commission.

(3) "Exclusive right to sell listing" means a written listing agreement appointing a broker the exclusive agent for the sale of property for a specific period of time, and which entitles the listing broker to a commission if the property is sold by the owner, by the broker or by anyone else.

(4) "Open listing" means a written listing agreement, which may be given to any number of brokers, with the first broker to secure a buyer under the terms of the listing agreement earning the commission.

(5) "Use a form" means to complete a contractual or conveyance form by filling in the blanks or modifying printed provisions on a form for the purpose of accomplishing the intent of a party in a specific real estate transaction.

History: Cr. Register, March, 1986, No. 363, eff. 4−1−86; r. (2), renum. (3) to be (5), cr. (2) to (4), Register, July, 1998, No. 511, eff. 8−1−98; **correction in (1) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.**

REEB 16.03 Approved forms. (1) In addition to forms prepared and approved by the board pursuant to s. 452.05 (1) (b), Stats., the board approves the following for use by brokers:

(a) Forms prepared and approved by the state bar of Wisconsin for deeds, mortgages, mortgage notes, truth−in−lending disclosures, land contracts, release of mortgage, satisfaction of mortgage, assignment of mortgage and assignment of land contract;

(b) Uniform commercial code forms: 1, 2, 3, 4, 11, 410, 411, 430, 445, 450 and 451;

(c) Contractual forms for the sale, purchase or rental of real estate or a business opportunity located in another state, if the contractual forms are those which licensees may legally and customarily use for such transactions in the state where the real estate or business opportunity is located.

(d) Forms prepared by governmental agencies for use in programs administered by them under authority provided by law.

(e) Forms to be used for a property management agreement between a broker and a landlord, prepared by the broker entering into the agreement, the broker's attorney, or the landlord, that contain provisions relating to leasing, managing, marketing and overall management of the landlord's property.

(2) In addition to forms prepared and approved by the board pursuant to s. 452.05 (1) (b), Stats., the board grants approval of the forms in sub. (1) (c), (d) and (e) for use by salespersons.

Note: Copies of most approved forms are available from various business supply stores and forms printers throughout the state of Wisconsin. Forms prepared by governmental agencies for use in programs administered by those agencies, and approved by the board, are available from those agencies. Contractual forms which have been prepared by the department and are currently approved by the board are the following: WB−1 Residential Listing Contract − Exclusive Right To Sell WB−2 Farm Listing Contract − Exclusive Right To Sell WB−3 Vacant Land Listing Contract − Exclusive Right to Sell WB−4 Residential Condominium Listing Contract − Exclusive Right To Sell WB−5 Commercial Listing Contract − Exclusive Right To Sell WB−6 Business Listing Contract − Exclusive Right To Sell WB−11 Residential Offer To Purchase WB−12 Farm Offer To Purchase WB−13 Vacant Land Offer To Purchase WB−14 Residential Condominium Offer To Purchase WB−15 Commercial Offer To Purchase WB−16 Business Offer To Purchase WB−24 Option To Purchase WB−25 Bill of Sale WB−26 Timeshare Contract (Sale by Developer) WB−27 Timeshare Contract (Resale by Non−Developer) WB−36 Buyer Agency Agreement WB−37 Exclusive Listing Contract For Lease of Residential Property WB−42 Amendment To Listing Contract WB−43 Amendment To Contract of Sale/Notice Relating to Contract of Sale WB−44 Counter−Offer WB−45 Cancellation Agreement and Mutual Release WB−46 Multiple Counter−Offer WB−47 Amendment to Buyer Agency Contract.

History: Cr. Register, March, 1986, No. 363, eff. 4−1−86; cr. (1) (d), am. (2), Register, June, 1988, No. 390, eff. 7−1−88; cr. (1) (e), am. (2), Register, January, 1992, No. 433, eff. 2−1−92; am. (1) (a), Register, July, 1992, No. 439, eff. 8−1−92; **correction in (2) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.**

REEB 16.04 When to utilize approved forms. (1) Except as provided in subs. (2) and (3), a licensee shall use approved forms when acting as an agent or a party in a real estate or business opportunity transaction.

(2) For those kinds of real estate or business opportunity transactions for which the board has not approved contractual forms a licensee, when acting as an agent or a party, may use contractual forms drafted by a party or an attorney, if the name of the drafter is imprinted on the form before use by a licensee. For the purpose of this subsection, a listing broker is a party to the listing contract transaction.

(3) A licensee may in any transaction where the licensee is acting as an agent, negotiate an agreement and permit the parties or an attorney for one or other of the parties to draft or prepare a contractual agreement which embodies all of the negotiated terms and conditions.

History: Cr. Register, March, 1986, No. 363, eff. 4−1−86; am. (1) to (3), cr. (2m) and (3m), Register, July, 1992, No. 439, eff. 8−1−92; am. (1) and (2), r. (2m) to (3m), renum. (4) to be (3) and am., Register, July, 1993, No. 451, eff. 8−1−93; **correction in (2) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.**

REEB 16.05 Legal advice and practice of law. (1) A licensee may not give advice or opinions concerning the legal rights or obligations of parties to a transaction, the legal effect of a specific contract or conveyance, or the state of title to real estate.

(2) Notwithstanding sub. (1), a licensee may give a general explanation of the provisions in an approved form to the parties to a transaction at the time of completing the form or when delivering an approved form for the seller's or buyer's acceptance.

(3) A licensee may use approved forms only in those transactions in which the licensee is acting in a capacity as licensee or in which the licensee is a principal, and in either case the use of such forms is incidental to the real estate practice of the licensee.

(4) A licensee may not make a separate charge for completing an approved form in connection with a transaction.

History: Cr. Register, March, 1986, No. 363, eff. 4−1−86.

REEB 16.06 How to use approved forms. (1) A licensee who reproduces or arranges for printing a contractual form prepared and approved by the board pursuant to s. 452.05 (1) (b), Stats.:

(a) Shall assure that the numbering of lines, line contents and the lines appearing on each page are identical to those on the department's forms.

(b) May not reproduce the form in such a manner that optional provisions are left out and blank lines are filled in without any indication of where the optional provisions and blank lines occur on the department's form.

(c) Shall indicate that the form is reproduced by the licensee's firm, stating its address and telephone number at an appropriate place on the form.

(d) May not add additional blank lines or add additional lines containing textual content, or alter the format of the form in any other manner. "Alter the format" does not include modifying margins or font size consistent with par. (a). To add textual content or additional provisions, a licensee shall only fill in blank lines provided for that purpose on a form or add addenda containing additional or altered provisions as provided in subs. (4) and (5).

(e) Shall retain the department's approval statement and date in the upper left corner exactly as these appear on the department's form.

(f) Shall assure that the formatting of the form is substantially identical to that on the department's form.

(2) A licensee who reproduces or arranges for printing a form under s. REEB 16.03 (1) (a) or (b) may not modify the form in any way.

(3) A licensee may cross out provisions on approved forms to reflect the agreement of a party to a transaction, provided that the deleted provisions remain legible.

(4) Except as provided in sub. (5), a licensee may use a pre−prepared addendum form and attach it to an approved form under the following circumstances:

(a) The addendum has been prepared by the broker or the broker's attorney; and

(b) The addendum is incorporated by reference into the approved form and the approved form and the addendum are properly related to one another; and

(c) The addendum relates to the blanks on an approved form; or alters or supplants optional provisions within an approved form.

(5) A licensee may use a pre−prepared addendum which supplants or alters the printed provisions of an approved form only if:

(a) The addendum has been drafted by an attorney who is identified on the addendum;

(b) There are no optional or multiple choice provisions in the addendum;

(c) There are no blanks or fill−in provisions in the addendum except for spaces for the signatures of the parties and those items required under par. (d); and,

(d) The addendum is incorporated by reference into the approved form and the approved form and the addendum are properly related to one another.

(6) A licensee may alter an approved exclusive−right−to−sell listing contract to create an exclusive agency listing or an open listing.

(7) A licensee shall use the latest approved version of an approved form.

(8) A licensee shall use approved forms and prepare addenda in such a manner as to adequately accomplish the contractual intent of the person for whom the licensee uses the forms and prepares the addenda.

History: Cr. Register, March, 1986, No. 363, eff. 4−1−86; am. (4), Register, June, 1988, No. 390, eff. 7−1−88; am. (4), Register, July, 1993, No. 451, eff. 8−1−93; cr. (1) (f), Register, August, 1994, No. 464, eff. 9−1−94; r. and recr. (4), Register, July, 1998, No. 511, eff. 8−1−98; EmR0811: emerg. am. (1) (a), (b) and (d), eff. 4−16−08; CR 08−040: am. (1) (a), (b) and (d) Register October 2008 No. 634, eff. 11−1−08; **correction in (1) (intro.), (2) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.**

REEB 16.07 Violation of this chapter. A licensee who violates this chapter demonstrates, for purposes of s. 452.14 (3) (i), Stats., incompetency to act as a real estate licensee in a manner that safeguards the interests of the public and violates s. 452.14 (3) (m), Stats.

History: Cr. Register, March, 1986, No. 363, eff. 4−1−86; am. Register, July, 1998, No. 511, eff. 8−1−98.

Chapter REEB 17

LICENSURE AND SUPERVISION OF EMPLOYEES

REEB 17.01 Authority.
REEB 17.02 Definitions.
REEB 17.025 Applicability.
REEB 17.03 Limitations on employees of a broker.
REEB 17.04 Notice of employment.
REEB 17.05 Transfer of employment.
REEB 17.06 Termination of employment.
REEB 17.07 Broker−employer's duty to check licensure of employees.
REEB 17.08 Supervision of employees.
REEB 17.12 Unlicensed personal assistants.

Note: Chapter REB 8 as it existed on April 30, 1972 was repealed and a new chapter REB 8 was created, Register, April, 1972, No. 196, effective May 1, 1972. Renumbered to be chapter RL 17, effective March 1, 1983. Chapter RL 17 as it existed on November 30, 1985 was repealed and a new chapter RL 17 was created effective December 1, 1985. **Chapter RL 17 was renumbered chapter REEB 17 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.**

REEB 17.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 452.07, 452.10 (4), 452.12 (2) and (3), and 452.14 (3), Stats.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389.

REEB 17.02 Definitions. (2m) "Broker−employe" means a broker who is employed to provide services for another broker.

(3) "Broker−employer" means a sole proprietor or business entity that employs another licensee to provide services to the broker.

(3g) "Immediate family" means any of the following:

(a) Parents, stepparents, grandparents, foster parents, children, stepchildren, grandchildren, foster children, brothers and their spouses, sisters and their spouses, of a licensee or a licensee's spouse.

(b) The spouse of a licensee.

(c) Aunts and uncles, sons−in law or daughters−in−law of a licensee or a licensee's spouse.

(3k) "Licensee" has the meaning under s. 452.01 (5), Stats.

(3m) "Open house" means a showing of real estate open to the public for viewing without an individual appointment.

(4g) "Reasonable review" means the timely review of a document or record to detect and correct errors which include ambiguous, omitted or incomplete portions of a document or record, or incorrect words, numbers, phrases, legal descriptions, terms or conditions. "Reasonable review" does not include the detection and correction of an error which is not apparent on the face of the document or record, unless the supervising broker knows or has reason to know of the error.

(4r) "Supervising broker" means a broker to whom a broker−employer's duty to supervise licensees employed by a broker−employer is delegated and who is responsible for ensuring compliance by the broker−employer with the duty to supervise licensed employees under s. REEB 17.08.

(5) "Unlicensed personal assistant" means a person not licensed under ch. 452, Stats., or a person who is licensed but not employed for the purpose of providing services for which a license is required under ch. 452, Stats., who on behalf of and under the direction of a licensee, provides the licensee with administrative, clerical or personal services for which a license under ch. 452, Stats., is not required.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; cr. (2m), (3m), and (5), am. (3), Register, January, 1998, No. 505, eff. 2−1−98; am. (3) and (5), cr. (3g) and (3k), Register, January, 2001, No. 541, eff. 2−1−01; CR 04−124: r. (1), (2) and (4), cr. (4g) and (4r) Register June 2005 No. 594, eff. 7−1−05; **correction in (4r) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

REEB 17.025 Applicability. For the purposes of this chapter, a business representative is not an employee of the business entity.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; am. Register, July, 1998, No. 511, eff. 8−1−98.

REEB 17.03 Limitations on employees of a broker. (1) A broker who is employed by a broker−employer may also engage in real estate practice in his or her own name, if the broker obtains written approval from the broker−employer and avoids conflicts of interest with his or her employment by the broker−employer.

(2) A licensee who is employed by a broker−employer may personally employ licensed persons only as unlicensed personal assistants within the meaning of s. REEB 17.02 (5), subject to the provisions in s. REEB 17.12.

(3) A licensee may be employed by only one broker−employer at any time.

(4) A salesperson or time−share salesperson may engage in real estate practice only when employed by a broker.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; am. (2), Register, January, 1998, No. 505, eff. 2−1−98; am. (2) to (4), Register, January, 2001, No. 541, eff. 2−1−01; **correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

REEB 17.04 Notice of employment. A licensee who wishes to engage in real estate practice as an employee of a broker−employer shall notify the department of the name of the broker−employer on forms prescribed by the board. If this notice is provided at the time of application for original licensure, the department may not charge a fee in addition to the fee specified in s. 440.05 (1), Stats. If the notice is provided other than at the time of application for original licensure, the licensee shall pay the fee specified in s. 440.05 (7), Stats.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; am. Register, January, 2001, No. 541, eff. 2−1−01; CR 04−124: am. Register June 2005 No. 594, eff. 7−1−05; **correction made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.**

REEB 17.05 Transfer of employment. (1) A licensee who wishes to transfer employment from one broker−employer to another shall submit to the department a transfer application accompanied by the fee specified in s. 440.05 (7), Stats.

(2) A licensee who transfers employment to another broker−employer may not engage in real estate practice for the new employer until the licensee has delivered or mailed a completed transfer application and the required fee to the department.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; am. Register, January, 2001, No. 541, eff. 2−1−01.

REEB 17.06 Termination of employment. A licensee who terminates employment with a broker−employer shall send written notice to the department within 10 days after the termination.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; am. Register, January, 2001, No. 541, eff. 2−1−01.

The Wisconsin Administrative Code on this web site is current through the last published Wisconsin Register. See also Are the Codes on this Website Official?

REEB 17.07 Broker−employer's duty to check licensure of employees. A broker−employer shall, prior to employing a licensee and at the beginning of each biennial licensure period, determine that each licensee employed by the broker is properly licensed. A broker−employer may not employ an unlicensed person or a person who has failed to file the notice of employment required under s. REEB 17.04 or the transfer application required by s. REEB 17.05 to engage in real estate practice for the broker−employer.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

REEB 17.08 Supervision of employees. (1) A broker−employer shall supervise the activities of any licensee employed by the broker−employer. Supervision includes but is not limited to the reasonable review of all listing contracts, offers to purchase, trust account records and other documents and records related to transactions as well as providing all licensees reasonable access to a supervising broker for purposes of consultation regarding real estate practice issues. Documents or records related to a transaction, described in ss. REEB 15.02, 15.03 and 15.04, including the receipt and proposed disbursement of real estate trust funds in or from the real estate trust account of the broker−employer, shall be reviewed by the supervising broker prior to the closing of the transaction. Broker−employers shall provide all licensed employees with a written statement of procedures under which the office and employees shall operate with respect to handling leases, listing contracts, offers to purchase and other documents relating to transactions. Broker−employers shall notify all employed licensees where a copy of the rules of the board maintained under s. REEB 24.16 may be obtained.

(2) A broker−employer shall be responsible for the preparation, custody, safety and correctness of all entries on real estate forms, closing statements and other records even though another person may be assigned these duties by the broker−employer.

(3) A broker−employer which is a business entity shall delegate the performance of the duty to supervise licensed employees to a supervising broker.

(4) A broker−employer who is not a business entity may delegate the duty to supervise licensed employees to a supervising broker. In the absence of a specific supervising broker delegation to another person, a broker−employer who is not a business entity is deemed to be a supervising broker.

(5) A delegation under this section shall be written and signed by or on behalf of the delegating broker−employer, identify the duty delegated, and be signed by the supervising broker to whom the delegation is made. A broker−employer may delegate the duty to supervise licensees employed by the broker−employer to more than one supervising broker.

Note: Sections REEB 17.08 (3) and (4) do not affect a broker−employer's liability under s. 452.12 (3), Stats.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; am. (1), Register, January, 2001, No. 541, eff. 2−1−01; CR 04−124: am. (1), cr. (3) to (5) Register June 2005 No. 594, eff. 7−1−05; **correction in (1) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.**

REEB 17.12 Unlicensed personal assistants. (1) A licensed employee, prior to employing an unlicensed personal assistant, shall enter into a written agreement with his or her broker−employer, setting forth the duties of the unlicensed personal assistant, the manner in which the personal assistant will be compensated for his or her services and the responsibilities between the licensed employee and broker−employer for supervision of the personal assistant's activities.

(2) An unlicensed personal assistant may not assist a licensee at an open house for the sale of real estate or a business without the direct, on−premises supervision and presence of a real estate licensee, and may not provide any services at an open house for which a license under ch. 452, Stats., is required.

Note: This rule does not prevent an owner from showing or holding an open house regarding his or her own residence, for example, or from permitting a non−compensation person, such as a relative or neighbor, from showing or holding an open house on the owner's behalf.

History: Cr. Register, January, 1998, No. 505, eff. 2−1−98; am. (1), Register, January, 2001, No. 541, eff. 2−1−01; CR 04−124: am. (1) Register June 2005 No. 594, eff. 7−1−05.

Chapter REEB 18

TRUST ACCOUNTS

REEB 18.01 Authorization.
REEB 18.02 Definitions.
REEB 18.031 Deposits and types of accounts.
REEB 18.032 Number of real estate trust accounts.
REEB 18.033 Time when real estate trust account shall be opened or may be closed.
REEB 18.034 Account designation.
REEB 18.035 Duty to notify the department.
REEB 18.036 Authorization to examine real estate trust accounts and records.
REEB 18.037 Form for notification and authorization.
REEB 18.04 Authorization to sign trust account checks.
REEB 18.05 Receipt for earnest money received by the broker.
REEB 18.06 Escrow agreement for earnest money not held by the broker.
REEB 18.07 After closing escrow agreements.
REEB 18.08 Real estate trust funds and cooperating brokers.
REEB 18.09 Disbursement of trust funds.
REEB 18.10 Commingling prohibited.
REEB 18.11 Non−depositable items.
REEB 18.12 Branch office trust account.
REEB 18.13 Bookkeeping system.
REEB 18.14 Violation of rules.

Note: Chapter REB 9 as it existed on February 28, 1983 was renumbered to be chapter RL 18, effective March 1, 1983. **Chapter RL 18 was renumbered chapter REEB 18 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.**

REEB 18.01 Authorization. The following rules are adopted pursuant to ss. 227.11, 452.07 and 452.13, Stats.

History: Cr. Register, April, 1981, No. 304, eff. 5−1−81; renum. from REB 9.01 and am. Register, February, 1983, No. 326, eff. 3−1−83.

REEB 18.02 Definitions. In this chapter:

(1) "Client funds" has that meaning given in s. 452.13 (1) (a), Stats.

(2) "Cooperating broker" means a broker who is assisting a buyer or a tenant in negotiations with a seller or landlord who is represented by a listing broker. A "cooperating broker" may be the agent of the buyer, the tenant, the seller, or the landlord.

(4) "Depository institution" has that meaning given in s. 452.13 (1) (b), Stats.

(5) "Real estate trust account" means an account for real estate trust funds maintained at a depository institution from which withdrawals or transfers can be made without delay, subject to any notice period that the depository institution is required to observe by law, and includes:

(a) Interest−bearing common trust accounts established for client funds;

(b) Non−interest bearing real estate trust accounts maintained for real estate trust funds other than client funds; and

(c) Interest−bearing real estate trust accounts maintained for real estate trust funds other than client funds.

(6) "Real estate trust funds" means any cash, checks, share drafts, drafts or notes, other than promissory notes, received by a broker or a broker's salespersons or time−share salespersons on behalf of a principal or any other person including, but not limited to:

(a) Payments on land contracts, mortgage payments and any other receipts pertaining to mortgages;

(b) Tax and insurance payments held in escrow;

(c) Advance fees and finder's fees, unless non−refundable;

(d) Rental application deposits and rents, but only when received while acting as an agent for another;

(e) Payments received for subsequent repayment to a third party;

(f) Security deposits on rental property, except as provided in s. REEB 18.031 (4); and

(g) Initial and additional earnest money downpayments and other monies received in connection with offers to purchase, options and exchanges, even if the broker, salesperson or time−share salesperson receives the downpayments or monies when negotiating the sale of real estate or a business opportunity which the broker, salesperson or time−share salesperson owns in whole or in part, or when negotiating the purchase of real estate or a business opportunity for ownership in whole or in part by the broker, salesperson or time−share salesperson.

History: Cr. Register, April, 1981, No. 304, eff. 5−1−81; r. and recr. (3), Register, April, 1982, No. 316, eff. 5−1−82; renum. from REB 9.02 and am. (1), Register, February, 1983, No. 326, eff. 3−1−83; cr. (2m), am. (3) (a) (intro.), renum. (3) (c) and (d) to be (3) (a) 4. and 5. and am. 5., Register, June, 1984, No. 342, eff. 7−1−84; r. and recr. Register, August, 1994, No. 464, eff. 9−1−94; r. (3), am. (5) (intro.), Register, July, 1998, No. 511, eff. 8−1−98; **correction in (6) (f) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

REEB 18.031 Deposits and types of accounts. (1) TIME OF DEPOSIT. A broker shall deposit all real estate trust funds received by the broker or broker's salespersons or time−share salespersons in a real estate trust account within 48 hours of receipt of the trust funds. If funds are received on a day prior to a holiday or other day when the depository institution is closed, the broker shall deposit the funds within the next 2 business days of the depository institution. If a broker receives funds which cannot be deposited by the broker, the broker shall, no later than one business day after receipt, either:

(a) Forward the funds to the payee, if someone other than the broker; or

(b) Return the funds to the payor.

(2) DUTY OF SALESPERSON. A salesperson or time−share salesperson who receives real estate trust funds shall promptly submit the funds to the employer−broker of the salesperson or time−share salesperson.

(3) INTEREST−BEARING ACCOUNTS. (a) Client funds shall be deposited in an interest−bearing common trust account and the department of administration shall be the beneficial owner of the interest accruing to the account, minus any service charges. At no time may the broker remove or use the interest earned on such accounts.

(b) Real estate trust funds, other than client funds, may be deposited in an interest−bearing account if the broker obtains from the persons for whom the funds are being held written authorization to deposit the funds in an interest−bearing account and if the authorization specifies how and to whom the interest will be disbursed. None of the interest earned on the funds deposited into an interest−bearing account may inure to the benefit of the broker.

(4) SECURITY DEPOSITS. A licensee having an ownership interest in a rental property shall either place security deposits related to that property in a real estate trust account or shall provide in a lease for security deposits to be held in an account maintained in the name of the owner or owners.

(5) RENTAL OWNER'S ACCOUNT. (a) In this subsection, "owner's account" means an account maintained by an owner of rental property for depositing and disbursing any funds payable to or by the owner.

(b) A broker may directly deposit into an owner's account rental application deposits, rents and security deposits which may have been made payable to one or more owners. The broker may be designated as a signatory on the owner's account and may make

disbursements from that account to the extent authorized by the owner in writing.

History: Cr. Register, August, 1994, No. 464, eff. 9−1−94; **correction made in (title) under s. 13.92 (4) (b) 2., Stats., Register November 2011 No. 671.**.

REEB 18.032 Number of real estate trust accounts. A broker may maintain more than one real estate trust account, including more than one interest−bearing common trust account for client funds, if the broker notifies the department of these accounts, as required in s. REEB 18.035.

History: Cr. Register, August, 1994, No. 464, eff. 9−1−94; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

REEB 18.033 Time when real estate trust account shall be opened or may be closed. (1) OPENING AN ACCOUNT. A broker shall open a real estate trust account if the broker receives real estate trust funds.

(2) CLOSING AN ACCOUNT. A broker may close a real estate trust account if no real estate trust funds remain in the account.

History: Cr. Register, August, 1994, No. 464, eff. 9−1−94.

REEB 18.034 Account designation. (1) A broker shall name the broker's real estate trust account with the name appearing on the broker's license or with a trade name submitted to the department under s. REEB 23.03 and shall include the words "trust account" in the name of the account.

(2) NAME ON CHECKS. A broker shall imprint the name of the real estate trust account on real estate trust account checks, share drafts or drafts.

History: Cr. Register, August, 1994, No. 464, eff. 9−1−94; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

REEB 18.035 Duty to notify the department. (1) OPENING AN ACCOUNT. No later than 10 days after opening any real estate trust account a broker shall provide the department with the name and number of the account, with the name of the depository institution in which the broker holds the account and with information concerning whether the account is for client funds or for real estate trust funds other than client funds. The information shall be provided on a form, as required in s. REEB 18.037.

(2) CHANGING OR CLOSING AN ACCOUNT. A broker shall notify the department no later than 10 days after a broker changes a real estate trust account name or number, changes the real estate trust account from one depository institution to another, closes a real estate trust account or changes a real estate trust account to or from an interest−bearing common trust account established for client's funds. The notification shall be provided on a form, as required in s. REEB 18.037.

History: Cr. Register, August, 1994, No. 464, eff. 9−1−94; **correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

REEB 18.036 Authorization to examine real estate trust accounts and records. (1) BROKER'S AUTHORIZATION. No later than 10 days after opening a real estate trust account a broker shall furnish the department authorization for the department to examine and audit all of the broker's real estate trust account records and authorization for the department of administration to examine all of the broker's interest−bearing common trust accounts maintained for client funds. The authorization shall be provided on a form, as required in s. REEB 18.037.

(2) DEPOSITORY INSTITUTION'S CERTIFICATION. No later than 10 days after opening a real estate trust account a broker shall obtain the certification of every depository institution in which the broker maintains a real estate trust account attesting to the existence of the account and consenting to the examination and audit of the account by a duly authorized representative of the department or, in the case of interest−bearing common trust accounts maintained for client funds, the department of administration. The certification shall be provided to the department on a form, as required in s. REEB 18.037.

History: Cr. Register, August, 1994, No. 464, eff. 9−1−94; **correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

REEB 18.037 Form for notification and authorization. A broker shall provide the information and authorization in ss. REEB 18.035 and 18.036 on a form provided by the department. This form shall be designated "consent to examine and audit trust account." However, when closing a real estate trust account, a broker may inform the board by letter only.

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

History: Cr. Register, August, 1994, No. 464, eff. 9−1−94; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

REEB 18.04 Authorization to sign trust account checks. A broker may authorize other persons to sign real estate trust account checks, share drafts or drafts drawn on the broker's real estate trust account if the person is at least 18 years of age.

History: Cr. Register, April, 1981, No. 304, eff. 5−1−81; renum. from REB 9.04 and am. (1), (2), (4) and (5), Register, February, 1983, No. 326, eff. 3−1−83; am. (1), (2), (3) (intro.) and (4), Register, June, 1984, No. 342, eff. 7−1−84; am. (1), r. (2) (a), renum. (2) (b) to be (2) (a) and am., Register, June, 1988, No. 390, eff. 7−1−88; am. (1), r. (2) to (5), Register, August, 1994, No. 464, eff. 9−1−94.

REEB 18.05 Receipt for earnest money received by the broker. A broker shall indicate on the offer to purchase the receipt of earnest money received from a buyer at the time the offer is drafted.

History: Cr. Register, April, 1981, No. 304, eff. 5−1−81; renum. from REB 9.05, Register, February, 1983, No. 326, eff. 3−1−83; am. Register, August, 1994, No. 464, eff. 9−1−94.

REEB 18.06 Escrow agreement for earnest money not held by the broker. If the parties to a transaction do not desire that the broker hold the earnest money in the broker's real estate trust account, and wish to designate an escrow agent other than the broker, the broker may not draft the escrow agreement. The escrow agreement shall be drafted by the parties or an attorney. The broker may not hold the funds in the broker's real estate trust account, nor may the broker act in any way as custodian of the funds for the parties. The funds, pursuant to the escrow agreement, shall be held by some other party, such as a bank, a savings and loan association, a credit union or an attorney.

History: Cr. Register, April, 1981, No. 304, eff. 5−1−81; renum. from REB 9.06, Register, February, 1983, No. 326, eff. 3−1−83; am. Register, June, 1984, No. 342, eff. 7−1−84; am. Register, August, 1994, No. 464, eff. 9−1−94.

REEB 18.07 After closing escrow agreements. (1) BY SEPARATE AGREEMENT. If the parties to a contract wish, or are required, to place funds in escrow which are to be held after closing by the broker in the broker's trust account or by another person until some future occurrence, an agreement to that effect shall be prepared by the parties or an attorney. If the broker holds these funds, the broker shall place them in the broker's real estate trust account. The broker may draft the escrow agreement if a form for this purpose has been approved by the board for use by licensees pursuant to s. REEB 16.03.

(2) ON CLOSING STATEMENT. A broker may hold in the broker's trust account without a separate escrow agreement occupancy or possession escrows, escrows for final proration of taxes, and escrows for charges incurred by a seller but not yet billed, provided that the closing statement shows that the broker is holding the funds.

History: Cr. Register, April, 1981, No. 304, eff. 5−1−81; am., Register, April, 1982, No. 316, eff. 5−1−82; renum. from REB 9.07, Register, February, 1983, No. 326, eff. 3−1−83; renum. to be (1) and am., cr. (2), Register, June, 1984, No. 342, eff. 7−1−84; am. Register, August, 1994, No. 464, eff. 9−1−94; **correction in (1) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.**

REEB 18.08 Real estate trust funds and cooperating brokers. If a transaction involves a cooperating broker and the parties have not agreed otherwise, the cooperating broker shall transfer any trust funds received to the listing broker or other per-

son designated by the parties to hold the trust funds within 24 hours of the deadline stated in the offer, option, exchange agreement or lease for transfer of the funds. If the trust funds are received in the form of a personal check, share draft or draft, the cooperating broker may withhold transfer of the payment pending evidence of clearance from the payor's depository institution. In any case, the cooperating broker shall transfer the trust funds to the listing broker within 30 days after receipt, unless the cooperating broker has obtained definitive information from the depository institution that the personal check, share draft or draft has not cleared.

History: Cr. Register, April, 1981, No. 304, eff. 5−1−81; am., Register, April, 1982, No. 316, eff. 5−1−82; renum. from REB 9.08, Register, February, 1983, No. 326, eff. 3−1−83; renum. to be (1) and am., cr. (2), Register, June, 1984, No. 342, eff. 7−1−84; r. and recr. Register, August, 1994, No. 464, eff. 9−1−94.

REEB 18.09 Disbursement of trust funds. (1) PROPER DISBURSEMENT. A broker who disburses trust funds from his or her real estate trust account under the following circumstances shall not be deemed to have violated s. 452.14 (3) (i), Stats.:

(a) To the payor upon the rejection, expiration or withdrawal prior to binding acceptance of an offer to purchase, lease, exchange agreement or option on real estate or a business opportunity;

(b) As directed in a written earnest money disbursement agreement signed by all parties having an interest in the trust funds. A closing statement is a written earnest money disbursement agreement for the purposes of this subsection. An offer to purchase, lease, exchange agreement or option is not a written earnest money disbursement agreement for the purpose of this subsection.

(c) To a court having jurisdiction over a civil action involving all parties having an interest in the trust funds;

(d) As directed by order of a court;

(e) Upon a good faith decision based upon advice of an attorney not representing any party to the contract;

(f) Upon authorization granted within the contract; or

(g) As otherwise provided by law.

(2) NOTIFICATION OF DISBURSEMENT. Prior to making a disbursement of trust funds under sub. (1) (a) where the broker has knowledge that not all parties agree that the rejection or withdrawal occurred prior to binding acceptance, and prior to making a disbursement under sub. (1) (e), (f) and (g) where the broker has knowledge that either party disagrees with the disbursement, the broker shall attempt to notify all parties in writing of the intent to disburse. The notice shall be delivered by certified mail to the parties' last known addresses and shall state to whom and when the disbursement will be made. The disbursement may not occur until 30 days after the date on which the notice is sent.

(3) WITHDRAWAL OF COMMISSIONS. (a) A broker shall withdraw commissions or fees earned by the broker from real estate trust accounts maintained by the broker within 24 hours after transactions are consummated or terminated, or after the commissions or fees are earned in accordance with the contract involved.

(b) A broker providing property management services shall disburse the fee earned for providing property management services as a regular monthly basis unless otherwise agreed in a written property management agreement signed by the parties to that agreement.

History: Cr. Register, April, 1981, No. 304, eff. 5−1−81; renum. from REB 9.09 and am. (3) (intro.), Register, February, 1983, No. 326, eff. 3−1−83; am. (2), (3) (a) and (b) and (4), Register, June, 1984, No. 342, eff. 7−1−84; r. and recr., Register, July, 1993, No. 451, eff. 8−1−93; renum. (3) to be (3) (a), cr. (3) (b), Register, August, 1994, No. 464, eff. 9−1−94.

REEB 18.10 Commingling prohibited. A broker shall deposit only real estate trust funds in the broker's real estate trust account and shall not commingle the broker's personal funds or other funds in the trust account except that a broker may deposit and keep a sum not to exceed $300.00 from the broker's personal funds in any real estate trust account, which sum shall be specifically identified and deposited to cover service charges relating to the trust account. A broker shall deposit additional personal funds in the broker's real estate trust account within 10 business days following receipt of a statement or other notification from a depository institution that a service charge has been made against the account for which insufficient personal funds are available in the account.

History: Cr. Register, April, 1981, No. 304, eff. 5−1−81; renum. from REB 9.10, Register, February, 1983, No. 326, eff. 3−1−83; am. Register, July, 1984, No. 342, eff. 7−1−84; am. Register, January, 1992, No. 433, eff. 2−1−92; am. Register, August, 1994, No. 464, eff. 9−1−94.

REEB 18.11 Non−depositable items. (1) OTHER THAN PROMISSORY NOTES. With the exception of promissory notes, a broker shall not hold any instrument, equity or thing of value which is not depositable in a real estate trust account. Non−depositable items other than promissory notes shall be held by one of the parties to a transaction or some other party, subject to an escrow agreement prepared by the parties or an attorney.

(2) PROMISSORY NOTES. A broker may accept and hold earnest money downpayments in the form of promissory notes received from the parties to a transaction, if the broker, the parties or the parties' attorney or attorneys:

(a) Delete or modify the earnest money provisions in a form approved pursuant to s. REEB 16.03 to show receipt of a promissory note;

(b) Grant the broker the authority to hold the note; and

(c) Provide appropriate disbursement directions for the broker.

History: Cr. Register, April, 1981, No. 304, eff. 5−1−81; renum. from REB 9.11, Register, February, 1983, No. 326, eff. 3−1−83; am. Register, August, 1994, No. 464, eff. 9−1−94; **correction in (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

REEB 18.12 Branch office trust account. In the event a branch office, as defined in s. RL 17.02 (1), maintains one or more real estate trust accounts, separate from any trust account at the broker's main office, a separate bookkeeping system shall be maintained in that branch office.

Note: 2001 Wis. Act 16 repealed s. 452.12 (3) (b), Stats., on which ss. RL 17.02 (1) and 18.12 were based. Section RL 17.02 (1) was repealed eff. 7−1−05. This section will be repealed in future rule making by the board.

History: Cr. Register, April, 1981, No. 304, eff. 5−1−81; renum. from REB 9.12 and am. Register, February, 1983, No. 326, eff. 3−1−83; am. Register, August, 1994, No. 464, eff. 9−1−94; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2000, No. 534.

REEB 18.13 Bookkeeping system. Each broker shall maintain and be responsible for a bookkeeping system in the broker's office consisting of at least the following:

(1) CASH JOURNAL. A broker shall maintain a record, called a journal, which shall show the chronological sequence in which real estate trust funds are received and disbursed as follows:

(a) For funds received, the journal shall include the date, the name of the party who is giving the money, and the amount.

(b) For disbursements, the journal shall include the date, the payee, the number of the check, share draft or draft and the amount.

(c) The journal shall identify each transaction by including the name of the principal, an identification number or other means of identification which will link the journal to the transactions and the ledger described in sub. (2).

(d) The journal shall show a running balance for each day on which receipts or disbursements are entered.

(2) LEDGER. A broker shall maintain a record which shows the receipts and the disbursements as they affect each particular transaction e.g., transactions between buyer and seller, landlord and tenant, etc. The ledger entry shall include the names of both parties to a transaction, the dates and the amounts received and the name of the party giving the money if different from the buyer. The ledger entry shall include the date, payee, number of the

check, share draft or draft and amount when funds are disbursed. The ledger shall show a running balance and segregate each transaction. The broker shall maintain a separate ledger or separate section of the ledger for each of the various kinds of real estate transactions, e.g., sales, rental collections or mortgage and land contract collections.

(3) ACCOUNT RECONCILIATION. The broker or a person designated by the broker shall reconcile the real estate trust account in writing each month except in the case where there has been no activity during the month. The written reconciliation shall include the ending account statement balance, the date and amounts of the deposits in transit, the number of the check, share draft or draft and amount of checks, share drafts or drafts written but not paid by the depository institution as of the ending date shown on the account statement to be reconciled, and the reconciled account statement ending balance.

(4) TRIAL BALANCE. The broker shall prepare or have prepared, in conjunction with sub. (3), a written listing, "trial balance", of all open items in the real estate trust account. The list must show the names of the parties to the transaction and the amount held in trust for the parties at the time corresponding to the account reconciliation. The broker may in lieu of the names of the parties to the transaction substitute the ledger page number or other means of identification from the ledger to label the funds in the trial balance.

(5) VALIDATION. The broker or a person designated by the broker shall review the reconciled account statement balance, the open ledger account listing, and the journal running balance to ensure that all of these records are valid and in agreement as of the date the account statement has been reconciled.

(6) USE OF COMPUTERS. A computerized system may be used to maintain the broker's bookkeeping system if:

(a) The system complies fully with subs. (1) to (5).

(b) All bookkeeping entries required by this chapter are made in the computerized system, even if other records are being simultaneously maintained.

(c) A backup copy of the bookkeeping records required under subs. (1) to (2) is made on any day on which entries are made in the computerized bookkeeping system. The backup copy shall be made on a disk or other medium which is separate and distinct from that on which the source documents reside.

(d) After complying with subs. (3) to (5), the document which records the account reconciliation, trial balance and validation is immediately copied to a backup medium and maintained by the broker.

(e) All records which are not maintained as written paper records are capable of being immediately converted to written paper records and immediately made available without charge to the department for the purposes of department audit or investigation.

(f) All computerized trust account records are retained pursuant to s. REEB 15.04.

History: Cr. Register, April, 1981, No. 304, eff. 5−1−81; renum. from REB 9.13, Register, February, 1983, No. 326, eff. 3−1−83; am. (intro.), (1) (b), (2) to (5), Register, June, 1984, No. 342, eff. 7−1−84; am. (1) (intro.), (a) and (b), (2) and (4), renum. (1) (c) to be (1) (d), cr. (1) (c) and (6), Register, August, 1994, No. 464, eff. 9−1−94; **correction in (6) (f) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

REEB 18.14 Violation of rules. A broker who fails to comply with the rules in this chapter shall be considered to have demonstrated incompetency to act as a real estate broker in a manner as to safeguard the interests of the public, as specified in s. 452.14 (3), Stats.

History: Cr. Register, April, 1981, No. 304, eff. 5−1−81; renum. from REB 9.14 and am. Register, February, 1983, No. 326, eff. 3−1−83; am. Register, June, 1984, No. 342, eff. 7−1−84.

Chapter REEB 22

APPRENTICES

REEB 22.005 Authority.
REEB 22.01 Apprentices.

Note: Chapter RL 22 was renumbered chapter REEB 22 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

REEB 22.005 Authority. The following rules are adopted pursuant to ss. 227.11 (2) and 452.09 (5), Stats.

History: Cr. Register, July, 1998, No. 511, eff. 8−1−98.

REEB 22.01 Apprentices. (1) REQUIREMENTS. (a) A broker may employ a person as an apprentice under a temporary salesperson's permit.

(b) A person desiring to act as an apprentice real estate salesperson shall file with the board an application for a temporary salesperson's permit. The application shall be in the form prescribed by the board and in accordance with ss. 452.09 and 452.10, Stats.

(c) Only persons who are a resident of this state and 18 years of age or over, may apply for a temporary salesperson's permit.

(e) Before the application for an apprentice permit may be accepted by the board, an applicant for a permit shall be indentured to a licensed real estate broker of the board in good standing, who has agreed, in writing, to an indenture agreement according to the rules of the board.

Note: Applications are available upon request to the department offices located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) NUMBER. Only one apprentice may be employed for each individual holding a broker's license unless the broker employs full time salespersons, in which case an additional apprentice shall be allowed for each 5 full time salespersons employed. However, in no case may an individual or business entity broker employ more than 3 apprentice salespersons.

(3) FEE. Each application for an apprentice permit shall be accompanied by the fee specified in s. 440.05 (6), Stats.

(4) PERIOD. An apprentice permit may not be granted for a period to exceed one year from the date of issuance by the board and may not be renewed.

(6) TERMINATION. An apprentice who leaves the employ of the sponsoring broker for any reason shall surrender the apprentice permit to the broker immediately upon the termination of the apprenticeship by the apprentice, the broker or the board.

(7) SCOPE OF EMPLOYMENT. (a) An apprentice may not close a real estate sale.

(b) An apprentice may not advertise in newspapers or telephone directories or by signs or any other means, nor may the broker advertise the name of the apprentice in any manner.

(c) An apprentice may use business cards if the business cards clearly state "Apprentice Salesperson" in type as large as the type used for the apprentice's name.

(d) An apprentice may not be paid a portion of a commission based upon sales or on listings secured nor may he or she be paid on a percentage basis for any other services performed.

(e) An apprentice may be paid on an hourly basis only and the rate of pay shall be included in the apprenticeship contract.

(f) An apprentice shall spend a minimum of 20 hours work each week, to be spent in no less than 3 days each week, performing apprenticeship duties. A minimum of 6 hours of the 20 hours work each week shall be spent pursuing a course of study of real estate laws and procedures.

(h) Enrollment in a real estate course at a school approved by the board pursuant to s. REEB 25.05 or 25.06 meets the requirement of a course of study for a maximum of 4 hours per week.

(i) Further study for the apprentice shall be conducted by the broker or by an instructor hired by the broker and approved in writing by the board.

(j) During the first 6 months of the apprenticeship, the apprentice may not secure listing contracts, offers to purchase or any other contracts unless accompanied by a fully licensed real estate salesperson or broker.

(k) During the first month of the apprenticeship, the apprentice may not negotiate with the public, but shall spend the apprenticeship time becoming acquainted with the operation of the real estate office.

(L) After the first month of the apprenticeship, the apprentice may handle open houses and rentals, but may not draft or negotiate offers to purchase or earnest money receipts.

(m) After 6 months of the apprenticeship, the apprentice may secure listing contracts if the listing contracts are reviewed and approved by the broker within 24 hours after they are secured and if the listing contracts contain the following clause:

"This listing contract has been secured by an apprentice salesperson and shall not be binding upon either party until approved by the broker. If the broker does not notify the seller that he or she is not approving this listing contract within 2 days from the date of this contract, then this contract shall be binding upon both parties.

Approved this ____ day of _____, 19____.
_____"
Broker

(n) The apprentice may not execute or have executed any rental agreement until the broker has approved the rental agreement in writing on the face of the contract.

(8) BROKER'S DUTIES. (a) The broker shall at all times be responsible for the acts of the apprentice and shall properly supervise the apprentice.

(b) The broker shall make available suitable instructions and a course of study for the apprentice, including real estate procedures, real estate law, office procedures and sales techniques.

(c) The broker shall pay the apprentice an hourly rate of pay which may not be less than the minimum wage required by state and federal law.

(d) The broker shall prepare and execute an apprenticeship contract which shall include the rate of pay, the hours to be spent by the apprentice, the instructions or course of study that will be offered to the apprentice and a schedule of commissions to be paid after the apprentice has obtained a salesperson's or broker's license. A copy of the contract shall be filed with the department.

(e) The broker may include in the apprenticeship contract, reasonable employment requirements after termination of the apprenticeship, but in no case may the employment right extend beyond 2 years after the termination of the apprenticeship.

(f) The broker will furnish the apprentice with a written copy of the rules of the office.

(9) APPRENTICES' DUTIES. (a) The apprentice shall punctually attend all courses of instruction offered by the broker or by schools

he or she shall attend unless excused for reasonable cause by the broker.

(b) The apprentice shall obey all office rules of the broker and any other rules set forth in the apprentice contract.

(c) The apprentice may not engage in any real estate activities outside of the scope of his or her apprenticeship employment.

(d) The apprentice shall be punctual on all appointments and shall fully inform his or her broker concerning all of his or her activities.

(e) The apprentice shall keep and maintain a record in the broker's office, containing the date, activity and work hours, including time spent at school or attending a course of instruction. The entries in the record shall be thoroughly reviewed, and be noted as having been reviewed, by the broker.

(10) GENERAL. (a) An apprenticeship contract may be canceled on the mutual consent of both parties.

(b) Upon informal written complaint filed with the department by either the broker or apprentice, the board may hold a formal or informal hearing to review an apprentice permit or apprenticeship program.

(c) The board may suspend or revoke an apprentice permit if the apprentice has violated any of the rules in this chapter.

(d) The board may suspend or revoke a broker's license if the broker has violated any of the rules in this chapter.

(e) A broker may at any time cancel an apprenticeship contract for just cause provided the broker furnishes the apprentice with a written statement within 5 days of the cancellation setting forth in detail the reasons for the cancellation of the apprenticeship contract.

History: Cr. Register, April, 1972, No. 196, eff. 5−1−72; am. (1) (d), Register, July, 1972, No. 199, eff. 8−1−72; am. (1) (a), Register, July, 1976, No. 247, eff. 8−1−76; renum. from REB 13.01 and am. Register, February, 1983, No. 326, eff. 3−1−83; renum. (1) (intro.) and (a) to be (1) (a) and (c) and am., am. (1) (b), (e), (2) to (4), (6), (7) (a) to (f), (h), (j) to (L), (m) (intro.), (n), (8) (a) to (e), (9) (b), (c), (e) and (10) (b) to (d), r. (1) (c), (d), (5) and (7) (g), Register, July, 1998, No. 511, eff. 8−1−98; **correction in (1) (b), (e), (4), (6), (7) (h), (i), (10) (c), (d) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.**

Chapter REEB 23

CHANGE OF NAME OR ADDRESS ON LICENSE, TRADE NAME OR FORM OF ORGANIZATION

REEB 23.01 Authority.
REEB 23.02 Change of name or address.
REEB 23.03 Trade name.
REEB 23.04 Change of form of business organization.

Note: Chapter REB 14 as it existed on December 31, 1981 was repealed and a new chapter REB 14 was created effective January 1, 1982. Renumbered to be chapter RL 23, effective March 1, 1983. **Chapter RL 23 was renumbered chapter REEB 23 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.**

REEB 23.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11, 452.07, 452.09, 452.10 and 452.12, Stats.

History: Cr. Register, December, 1981, No. 312, eff. 1−1−82; renum. from REB 14.01 and am. Register, February, 1983, No. 326, eff. 3−1−83; correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389.

REEB 23.02 Change of name or address. Any person licensed under ch. 452, Stats., who changes the name appearing on a current license or moves from the last address provided to the department shall notify the department in writing of the new name or address within 30 days of the change.

History: Cr. Register, December, 1981, No. 312, eff. 1−1−82; renum. from REB 14.02 and am. Register, February, 1983, No. 326, eff. 1−1−83; am. Register, July, 1998, No. 511, eff. 8−1−98.

REEB 23.03 Trade name. (1) DEFINITION. "Trade name" means the name other than the name appearing on the broker's license, under which the broker advertises or does business.

(2) NOTIFICATION. A licensed broker, before doing business under any trade name, shall notify the department in writing of the trade name.

History: Cr. Register, December, 1981, No. 312, eff. 1−1−82; renum. from REB 14.03 and am. (2), Register, February, 1983, No. 326, eff. 3−1−83.

REEB 23.04 Change of form of business organization. (1) APPLICATION. A licensed broker who intends to conduct business under a different form of business entity, shall apply for a new license. Upon payment of the fee specified in s. 440.05 (1), Stats., the department shall issue to the applicant, without examination, a license under the new form of entity.

(2) NEW LICENSE REQUIRED. A broker shall not engage in real estate activities under a different form of business entity until a new license is issued.

Note: Applications are available upon request to the department offices located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, December, 1981, No. 312, eff. 1−1−82; renum. from REB 14.04 and am. (1), Register, February, 1983, No. 326, eff. 3−1−83; am. Register, July, 1998, No. 511, eff. 8−1−98.

Chapter REEB 24

CONDUCT AND ETHICAL PRACTICES FOR REAL ESTATE LICENSEES

REEB 24.01 Authority and intent.
REEB 24.02 Definitions.
REEB 24.03 Competent services.
REEB 24.04 Advertising.
REEB 24.05 Disclosure of compensation and interests.
REEB 24.06 Unauthorized practice of law.
REEB 24.07 Inspection and disclosure duties.
REEB 24.075 Tie−in arrangements.
REEB 24.08 Agreements to be in writing.
REEB 24.085 False portrayal of interest, prohibited.
REEB 24.09 Securing agency agreements.
REEB 24.10 Net listing prohibited.
REEB 24.12 Confidentiality of offers.
REEB 24.13 Drafting and submission of written proposals.
REEB 24.15 Adequate funds required.
REEB 24.16 Availability of rules.
REEB 24.17 Miscellaneous requirements.

Note: Chapter REB 15 as it existed on February 29, 1980 was repealed and a new chapter REB 15 was created effective March 1, 1980. Renumbered from chapter REB 15, effective March 1, 1983. Chapter RL 24 was renumbered chapter REEB 24 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

REEB 24.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to ss. 227.11, 452.01, 452.07, 452.133, 452.138, 452.139 and 452.14, Stats.

(2) The intent of the board in adopting the rules in this chapter is to establish minimum standards of conduct for real estate licensees and to define that conduct which may result in board discipline pursuant to s. 452.14, Stats.

(3) If a licensee violates rules in this chapter, the licensee has demonstrated incompetency to act as a broker, salesperson or time−share salesperson in such manner as to safeguard the interests of the public under s. 452.14 (3) (i), Stats. However, the term "incompetency" is not limited in its meaning to violations of this chapter.

(4) If a licensee violates the rules set forth in s. REEB 24.075, the licensee has engaged in improper, fraudulent or dishonest dealing as used in s. 452.14 (3) (k), Stats. However, the terms "improper, fraudulent or dishonest dealing" are not limited in their meaning to violations of s. REEB 24.075.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; renum. (3) to be (5), (3) renum. from REB 15.02 (2) and cr. (4), Register, December, 1980, No. 300, eff. 1−1−81; renum. from REB 15.01 and am. (2) to (4), Register, February, 1983, No. 326, eff. 3−1−83; am. (1) and (3), r. (5) (intro.) and (d), renum. (5) (a) to (c) to be RL 24.025, RL 24.03 (2) (b) and (c), Register, January, 1987, No. 373, eff. 2−1−87; correction in (4) made under s. 13.93 (2m) (b) 4., Stats., Register, May, 1988, No. 389; am. Register, April, 1995, No. 472, eff. 5−1−95; correction in (2), (4) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

REEB 24.02 Definitions. (1) "Adverse fact" means any of the following:

(a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

1. Significantly and adversely affecting the value of the property.

2. Significantly reducing the structural integrity of improvements to real estate.

3. Presenting a significant health risk to occupants of the property.

(b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a contract or agreement made concerning the transaction.

(2) "Agency agreement" means a written agreement between a broker and a client in which the client authorizes the broker to provide brokerage services to the client.

(3) "Brokerage service" means any service described under s. 452.01 (2), Stats., provided by a broker to another person.

(4) "Builder" means any person engaged in the business of constructing homes without a buyer under contract or constructing homes under a contract with the buyer.

(5) "Buyer's broker" means a licensee who has an agency agreement with a buyer.

(6) "Client" means a party to a transaction who has an agency agreement with a broker for brokerage services.

(7) "Commonly controlled corporation" means one of 2 or more corporations in which the same person or persons own stock in each of the corporations, possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporations.

(9) "Customer" means a party to a transaction who is provided brokerage services by a broker but who is not a client.

(10) "Effectively controlled" means having the power or authority to cause the transfer of an interest in real estate for oneself or another but does not include the authority conferred by a real estate listing contract.

(12) "Material adverse fact" means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects or would affect the party's decision about the terms of such a contract or agreement.

(13) "Party" means a person seeking to engage in a transaction.

(13m) "Principal broker" means a broker who engages a subagent to provide brokerage services in a transaction.

(14) "Qualified third party" means a federal, state or local governmental agency, or any person whom the broker, salesperson or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the third party in order to prepare the written report described in s. 452.23 (2) (b), Stats.

(15) "Secured lender" means an individual or organization originating a loan in a real estate or business opportunity transaction secured by real estate or by the assets of a business or a business opportunity.

(16) "Real estate practice" means engaging in conduct which requires a license under ch. 452, Stats.

(18) "Transaction" means the sale, exchange, purchase or rental of, or the granting or acceptance of an option to sell, exchange, purchase or rent, an interest in real estate, a business or a business opportunity.

(19) "Written proposal" means any written document provided by one party to another during the course of a transaction, including but not limited to notices, offers, counteroffers, options, exchanges, rental agreements, and amendments.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; renum. (1) to be (5), renum. (2) to be REB 15.01 (3), cr. (1) to (4) and (6), Register, December, 1980, No. 300, eff. 1−1−81; renum. from REB 15.02, Register, February, 1983, No. 326, eff. 3−1−83; renum. (4) to (6) to be (7) to (9) under s. 13.93 (2m) (b) 1., Stats., Register,

September, 1990, No. 417; renum. (1) to (3) to be (2), (4) and (6), cr. (1), (3) and (5), Register, September, 1990, No. 417, eff. 10−1−90; am. (1), Register, January, 1992, No. 433, eff. 2−1−92; am. (1), Register, July, 1993, No. 451, eff. 8−1−93; r. and recr. (1), renum. (2) to (4) to be (4), (5), (7), (6) and (7) to be (8) and (10), (8) to be (11) and am., (a) to be (17), r. (5), cr. (2), (3), (6), (9), (12) to (16), (18), Register, April, 1995, No. 472, eff. 5−1−95; am. (7), r. (11), Register, July, 1998, No. 511, eff. 8−1−98; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; **CR 10−136: am. (2) to (5), r. (8), am. (13), cr. (13m), r. (17), cr. (19) Register April 2012 No. 676, eff. 7−1−12.**

REEB 24.03 Competent services. (1) DISCRIMINATION PROHIBITED. Licensees may not discriminate against, nor deny equal services to, nor be a party to any plan or agreement to discriminate against any person in any manner unlawful under applicable federal, state or local fair housing law.

Note: The primary references for federal and state fair housing laws are the 1988 amendments to the Federal Housing Act (Title VII of the Civil Rights Act of 1968) and Chapter 106, Subchapter II, Stats.

(2) COMPETENCE REQUIRED. (a) Licensees shall not provide services which the licensee is not competent to provide unless the licensee engages the assistance of one who is competent. Any person engaged to provide such assistance shall be identified and that person's contribution shall be described.

(b) Licensees shall act to protect the public against fraud, misrepresentation and unethical practices.

(c) Licensees shall be knowledgeable regarding laws, public policies and current market conditions on real estate matters and assist, guide and advise the buying or selling public based upon these factors.

(d) Licensees are not required to have the technical knowledge, skills or training possessed by competent third party inspectors and investigators of real estate and related areas.

Note: Paragraph (d) recognizes that licensees are not required to have the knowledge, skills or training possessed by, for example, persons such as home inspectors, plumbers, electricians or land surveyors.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; am. (1), Register, March, 1981, No. 303, eff. 4−1−81; renum. from REB 15.03, Register, February, 1983, No. 326, eff. 3−1−83; am. (1), renum. (2) to be (2) (a), (2) (b) and (c) renum. from RL 24.01 (5) (b) and (c) and am., Register, January, 1987, No. 373, eff. 2−1−87; am. (1), cr. (2) (d), Register, July, 1993, No. 451, eff. 8−1−93.

REEB 24.04 Advertising. (1) FALSE ADVERTISING. Licensees shall not advertise in a manner which is false, deceptive, or misleading.

(2) DISCLOSURE OF NAME. (a) Except for advertisements for the rental of real estate owned by the broker, a broker shall in all advertising disclose the broker's name exactly as printed on the broker's license or disclose a trade name previously filed with the department, as required by s. REEB 23.03, and in either case clearly indicate that the broker is a business concern and not a private party.

(b) Except for advertisements for the rental of real estate owned by the licensee, a licensee employed by a broker shall advertise under the supervision of and in the name of the employing broker.

(c) A licensee may advertise the occasional sale of real estate owned by the licensee or the solicitation of real estate for purchase by the licensee without complying with pars. (a) and (b), provided that the licensee clearly identifies himself, herself or itself as a real estate licensee in the advertisement.

(3) ADVERTISING WITHOUT AUTHORITY PROHIBITED. Brokers shall not advertise property without the consent of the owner.

(4) ADVERTISED PRICE. Brokers shall not advertise property at a price other than that agreed upon with the owner; however, the price may be stated as a range or in general terms if it reflects the agreed upon price.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; am. (4), Register, March, 1981, No. 303, eff. 4−1−81; renum. from REB 15.04 and am. (2), Register, February, 1983, No. 326, eff. 3−1−83; renum. (2) to be (2) (a) and am., cr. (2) (b) and (c), Register, January, 1987, No. 373, eff. 2−1−87; am. (2) (c), Register, April, 1995, No. 472, eff. 5−1−95; correction in (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

REEB 24.05 Disclosure of compensation and interests. (1) COMPENSATION. (a) A licensee acting as an agent in a real estate or business opportunity transaction may not accept any fee or compensation related to the transaction from any person, other than the licensee's client, principal broker, or broker−employer without prior written consent from all parties to the transaction.

(b) A licensee acting as an agent in a real estate or business opportunity transaction may not recommend or suggest to a party to the transaction the services of another individual or entity from which the licensee may receive compensation for a referral or in which the licensee has an interest, unless the licensee, prior to or at the time of the referral, discloses to the party in writing the fact that he or she may receive compensation for the referral or that he or she has an interest in the individual or entity providing the services. This paragraph does not apply when the licensee makes a referral to another licensee for real estate services under s. 452.19, Stats.

(2) DISCLOSURE OF INTEREST. A licensee acting as an agent in a real estate or business opportunity transaction may not act in the transaction on the licensee's own behalf, on behalf of the licensee's immediate family or firm, or on behalf of any other organization or business entity in which the licensee has an interest without the prior written consent of all parties to the transaction. For the purpose of this subsection, a licensee shall obtain the written consent in the offer to purchase, option, lease or other transaction contract.

(4) DISCLOSURE TO SELLER. A listing broker may not pay any compensation or incentive to a licensee who is acting as a buyer in a transaction without prior written consent from the seller.

(5) DISCLOSURE OF LICENSURE. (a) A licensee acting as a principal in a real estate or business opportunity transaction shall disclose his, her, or its license status and intent to act in the transaction as a principal at the earliest of all of the following:

1. The first contact with the other party or an agent representing the other party where information regarding the other party or the transaction is being exchanged.

2. A showing of the property.

3. Any other negotiation with the seller or the listing broker.

(b) The disclosure under this subsection shall be made in writing to the other party in a transaction or to an agent representing the other party.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; renum. (3) and (4) to be (4) and (5), cr. (3), Register, December, 1980, No. 300, eff. 1−1−81; am. (5), Register, March, 1981, No. 303, eff. 4−1−81; renum. from REB 15.05, Register, February, 1983, No. 326, eff. 3−1−83; am. (1) and (5), Register, June, 1988, No. 390, eff. 7−1−88; r. and recr. Register, July, 1993, No. 451, eff. 8−1−93; am. (1), (2), (3), (5), Register, April, 1995, No. 472, eff. 5−1−95; renum. (5) to be (5) (a) (intro.), cr. (5) (a) 1. to 3., and (b), Register, January, 2001, No. 541, eff. 2−1−01; **CR 10−136: am. (title), (1) (title), renum. (1) to be (1) (a) and am., am. (2), r. (3) (title), renum. (3) to be (1) (b) and am., r. and recr. (4), am. (5) (b) Register April 2012 No. 676, eff. 7−1−12.**

REEB 24.06 Unauthorized practice of law. (1) UNAUTHORIZED PRACTICE OF LAW PROHIBITED. Licensees shall not engage in activities that constitute the unauthorized practice of law.

(2) LEGAL COUNSEL NOT TO BE DISCOURAGED. Licensees shall not discourage any person from retaining an attorney.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; renum. from REB 15.06, Register, February, 1983, No. 326, eff. 3−1−83.

REEB 24.07 Inspection and disclosure duties. (1) INSPECTION OF REAL ESTATE. (a) *General requirement.* A licensee, when engaging in real estate practice which involves real estate improved with a structure, shall conduct a reasonably competent and diligent inspection of accessible areas of the structure and immediately surrounding areas of the property to detect observable, material adverse facts. A licensee, when engaging in real estate practice which involves vacant land, shall, if the vacant

land is accessible, conduct a reasonably competent and diligent inspection of the vacant land to detect observable material adverse facts.

(b) *Listing broker.* When listing real estate and prior to execution of the listing contract, a licensee shall inspect the real estate as required by sub. (1), and shall make inquiries of the seller on the condition of the structure, mechanical systems and other relevant aspects of the property as applicable. The licensee shall request that the seller provide a written response to the licensee's inquiry.

(c) *Other licensees.* Licensees, other than listing brokers, shall inspect the real estate as required by sub. (1) prior to or during the showing of the property, unless the licensee is not given access for a showing.

(d) *Specific conduct regarding inspections.* A reasonably competent and diligent inspection of real estate improved with a structure does not require the operation of mechanical equipment; the opening of panels, doors or covers for access to mechanical systems; or the moving of furniture, boxes or other property; nor does it require a licensee to observe areas of the property for which entry presents an unreasonable risk of injury or areas accessible only by ladder, by crawling or other equivalent means of access. A licensee is not required to retain third party inspectors or investigators to complete a reasonably competent and diligent inspection. A reasonably competent and diligent inspection of vacant land does not require an observation of the entire property, but shall include, if given access, an observation of the property from at least one point on or adjacent to the property.

(2) DISCLOSURE OF MATERIAL ADVERSE FACTS. A licensee may not exaggerate or misrepresent facts in the practice of real estate. A licensee, when engaging in real estate practice, shall disclose to each party, in writing and in a timely fashion, all material adverse facts that the licensee knows and that the party does not know or cannot discover through a reasonably vigilant observation, unless the disclosure of the material adverse fact is prohibited by law. This provision is not limited to the condition of the property, but includes other material adverse facts in the transaction.

Note: Certain "material adverse facts", as defined in s. REEB 24.02 (12), may not be disclosed by law. For example, unless specifically authorized by a seller, a licensee may not disclose to a potential buyer the actual minimum sales price the seller will accept. See s. 452.133 (1) (d), Stats.

(3) DISCLOSURE OF INFORMATION SUGGESTING MATERIAL ADVERSE FACTS. A licensee, when engaging in real estate practice, who becomes aware of information suggesting the possibility of material adverse facts to the transaction, shall be practicing competently if the licensee discloses to the parties the information suggesting the possibility of material adverse facts to the transaction in writing and in a timely fashion, recommends the parties obtain expert assistance to inspect or investigate for possible material adverse facts to the transaction, and, if directed by the parties, drafts appropriate inspection or investigation contingencies. This provision is not limited to the condition of the property, but includes other material adverse facts to the transaction, including but not limited to defects and conditions included within the report form under s. 709.03, Stats. A licensee is not required to retain third party inspectors or investigators to perform investigations of information suggesting the possibility of a material adverse fact to the transaction.

(4) DISCLOSURE OF SIDE AGREEMENTS. A licensee, when engaging in real estate practice, who becomes aware of the fact that a party to the transaction has not disclosed that party's entire agreement regarding the transaction to that party's secured lender, shall disclose this fact, in writing and in a timely manner, to the party's secured lender.

(5) RELIANCE UPON THIRD PARTY INSPECTIONS AND INVESTIGATIONS. If a licensee or a party in a transaction engages the services of a qualified third party to conduct a property inspection or investigation of material facts, the licensee may rely on the results of the inspection or investigation providing the licensee obtains a written report of the inspection or investigation and delivers a copy of the report to all interested parties in a timely manner.

(6) INCONSISTENCIES. If a licensee's reasonably competent and diligent inspection reveals facts materially inconsistent with or materially contradictory to the seller's statements provided under sub. (1) (a), or the inspection or investigation report of a third party, the inconsistency shall be disclosed in writing and in a timely manner to the parties.

(7) FALSE INFORMATION. Licensees shall not knowingly give false information about another licensee or property listed with another licensee.

(8) DISCLOSURE OF AGENCY. (a) *General requirements.* 1. A broker may not negotiate on behalf of a party who is not the broker's client unless the broker provides to the party a copy of the broker disclosure to customers required under s. 452.135 (1), Stats. If the brokerage services are related to real estate primarily intended for use as a residential property containing one to 4 dwelling units, the broker shall request the party's signed acknowledgement that the party has received a copy of the written disclosure statement.

1g. A broker may not negotiate on behalf of a client unless the broker gives the client a copy of the broker disclosure required under s. 452.135 (2), Stats.

1r. If a client enters into an agency agreement with a broker to receive brokerage services related to real estate primarily intended for use as a residential property containing one to 4 dwelling units, and the broker disclosure to clients is not incorporated into the agency agreement, the broker shall request the client's signed acknowledgement that the client has received a copy of the written disclosure statement required in s. 452.135 (2), Stats.

2. Licensees acting as agents of potential buyers of real estate that is used or intended to be used principally for one to 4 family residential purposes, who are negotiating directly with the seller or who are aware that the owner of the real estate has granted a listing broker the exclusive right to sell, shall notify the seller or the listing broker, as applicable, of the licensee's buyer agency relationship at the earlier of all of the following:

a. The first contact with the seller or the listing broker where information regarding the seller or transaction is being exchanged.

b. A showing of the property.

c. Any other negotiation with the seller or the listing broker.

3. When the nature of a licensee's representation of a client or customer changes such that it makes the initial disclosure that was provided under s. 452.135, Stats., incomplete, misleading, or inaccurate, the licensee shall provide the customer or client with a new disclosure, as required in s. 452.135, Stats.

(b) *Agency agreements.* 1. Brokers or their salespeople shall explain to their clients the responsibilities of seller's agents, buyer's agents and subagents before entering into an agency agreement.

2. No broker or broker's salesperson may permit other brokers to act as subagents in a transaction unless the broker's client has authorized the use of a subagent in the agency agreement.

(c) *Written proposals.* Licensees shall state, in the offer to purchase, the lease, the option to purchase, or the exchange agreement, whom the licensee represents as an agent in a transaction.

(d) *Subagency arrangements.* 1. A listing broker shall provide a broker disclosure statement to a customer as required in s. 452.135 (1), Stats., to the buyer if negotiations are being conducted directly with the buyer and not through a buyer's broker.

2. A buyer's broker shall provide a broker disclosure statement to a customer as required in s. 452.135 (1), Stats., to a seller

if negotiations are being conducted directly with the seller and not through a seller's broker.

3. A subagent shall provide a broker disclosure statement to a customer as required in s. 452.135 (1), Stats., with whom he or she is working but not to the principal broker's client.

4. A principal broker is not required to provide a broker disclosure statement to a customer as required in s. 452.135 (1), Stats., to a customer of their subagents.

(e) *Agency agreements for lease and property management contracts.* 1. A licensee who is entering into agency agreements for lease or property management contracts shall provide to his or her clients the broker disclosure statement as required in s. 452.135 (2), Stats.

2. A licensee shall provide to prospective tenants a broker disclosure statement as required in s. 452.135 (1), Stats., when negotiating the terms of a lease on behalf of the client.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; emerg. r. (2), eff. 10−14−80; cr. (3), Register, December, 1980, No. 300, eff. 1−1−81; r. (2), Register, March, 1981, No. 303, eff. 4−1−81; renum. from REB 15.07, Register, February, 1983, No. 326, eff. 3−1−83; cr. (2), Register, January, 1987, No. 373, eff. 2−1−87; am. (1), r. and recr. (2), cr. (4), Register, June, 1988, No. 390, eff. 7−1−88; am. (1), cr. (1) (a) to (c) and (4) (d), r. and recr. (2), Register, September, 1990, No. 417, eff. 10−1−90; r. and recr. (1), renum. (2), (3), (4) to be (5), (6), (7), cr. (2), (3), (4), Register, July, 1993, No. 451, eff. 8−1−93; am. (1) (a), (d), (2), (3), (5), renum. (1) (a), (b) to be (1) (b), (c) and am., (6) to be (7), r. (1) (c), (7), r. and recr. (4), cr. (6), (8), Register, April, 1995, No. 472, eff. 5−1−95; am. (8) (a) 2. (intro.), a. and c., Register, January, 2001, No. 541, eff. 2−1−01; **CR−136: r. and recr. (8) (a) 1., cr. (8) (a) 1g., 1r., am. (8) (a) 2. (intro.), 3., r. (8) (a) 4., am. (8) (b) (title), 1., 2., (c), r. and recr. (8) (d), (e) Register April 2012 No. 676, eff. 7−1−12.**

REEB 24.075 Tie−in arrangements. Licensees shall not:

(1) Condition the sale of real estate owned by the licensee or whose sale is effectively controlled by the licensee to a buyer upon the buyer's agreement to purchase another parcel or real estate.

(2) Condition the sale of real estate owned by the licensee or whose sale is effectively controlled by the licensee upon the buyer's agreement to list the real estate or other real estate owned by the buyer with the licensee.

Note: The following are 2 common examples of activities which would violate this subsection: (1) requiring a builder to list a speculation home with the licensee; and (2) requiring a buyer to list a present home with the licensee.

(3) Condition the sale of vacant real estate owned by the licensee or whose sale is effectively controlled by the licensee upon the buyer's agreement to employ one or more specific builders to make improvements on the real estate unless:

(a) The builder owns a bona fide interest in the real estate; and there is full disclosure as specified in s. REEB 24.05 (1) (b).

(b) The builder and the licensee or the builder and the owner of the real estate are the same person or are commonly controlled corporations and whose business is selling improved property and not vacant land; and there is full disclosure as in s. REEB 24.05 (1) (b).

(c) The agreement is a bona fide effort to maintain development quality or architectural uniformity and no consideration passes from contractor to licensee for soliciting this agreement.

History: Cr. Register, December, 1980, No. 300, eff. 1−1−81; renum. from REB 15.075 and am. (3) (a) and (b), Register, February, 1983, No. 326, eff. 3−1−83; correction in (3) (a), (b) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671**; correction in (3) (a), (b) made under s. 13.92 (4) (b) 7. Stats., Register April 2012 No. 676.**

REEB 24.08 Agreements to be in writing. A licensee shall put in writing all listing contracts, guaranteed sales agreements, buyer agency agreements, offers to purchase, property management agreements, option contracts, financial obligations and any other commitments regarding transactions, expressing the exact agreement of the parties unless the writing is completed by the parties or their attorneys or the writing is outside the scope of the licensee's authority under ch. REEB 16.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; renum. from REB 15.08, Register, February, 1983, No. 326, eff. 3−1−83; am. Register, January, 1987, No. 373, eff. 2−1−87; am. Register, June, 1988, No. 390, eff. 7−1−88; am. 24.08, Register, July, 1993, No. 451, eff. 8−1−93; correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

REEB 24.085 False portrayal of interest, prohibited. No licensee shall draft or use any document which the licensee knows falsely portrays an interest in real estate.

History: Cr. Register, December, 1980, No. 300, eff. 1−1−81; renum. from REB 15.085, Register, February, 1983, No. 326, eff. 3−1−83.

REEB 24.09 Securing agency agreements. Licensees may not mislead a potential client regarding the benefits which might be realized through the use of the licensee's services. A licensee also may not mislead a potential client regarding the market value of real estate or a business opportunity to be leased, rented, purchased, optioned, or sold under an agency agreement.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; renum. from REB 15.09, Register, February, 1983, No. 326, eff. 3−1−83; r. and recr. Register, April, 1995, No. 472, eff. 5−1−95; **CR 10−136: am. Register April 2012 No. 676, eff. 7−1−12.**

REEB 24.10 Net listing prohibited. Licensees shall not obtain, negotiate or attempt to obtain or negotiate any listing contract providing for a stipulated net price to the owner with the excess over the stipulated net price to be received by the broker as commission.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; renum. from REB 15.10, Register, February, 1983, No. 326, eff. 3−1−83.

REEB 24.12 Confidentiality of offers. (1) Except as provided in sub. (2), a licensee acting as a principal or an agent in a real estate or business opportunity transaction shall not disclose any of the terms of one prospective buyer's offer to purchase, exchange agreement or option contract proposal to any other prospective buyer or to any person with the intent that this information be disclosed to any other prospective buyer. Licensees shall encourage all prospective buyers to submit their best offers. A licensee may, but is not required to, disclose information known by the licensee regarding the existence of other offers on the property, the fact that a seller has accepted an offer, that the offer is subject to contingencies and that the offer is subject to a clause requiring removal of certain contingencies upon the occurrence of an event such as receipt, acceptance or conditional acceptance of another offer.

(2) As used in this subsection, "right of first refusal" means the right of a person to have the first opportunity to purchase or lease real property. "Right of first refusal" does not mean a so−called "bump clause" which is a contingency provision in a purchase agreement that requires the prospective buyer to remove certain contingencies in the buyer's purchase agreement or to relinquish the buyer's primary status to a secondary offer. If a licensee is providing brokerage services in a transaction and the licensee has knowledge that the property is subject to a right of first refusal, the licensee shall disclose the right of first refusal, in writing and in a timely manner, to all persons seeking to acquire an interest subject to the right of first refusal. After disclosure of the right of first refusal to a party seeking to acquire an interest in the property, the licensee may deliver a copy of that party's subsequent offer to purchase, exchange agreement, option contract or lease proposal to the party holding the right of first refusal.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; am. Register, March, 1981, No. 303, eff. 4−1−81; renum. from REB 15.12, Register, February, 1983, No. 326, eff. 3−1−83; am. Register, July, 1993, No. 451, eff. 8−1−93; renum. RL 24.12 to be (1), cr. (2), Register, January, 2001, No. 541, eff. 2−1−01.

REEB 24.13 Drafting and submission of written proposals. (1) REFUSAL PROHIBITED. Licensees shall not refuse to draft or submit any written proposal unless the terms of the written proposal would be contrary to specific instructions of the other party.

(2) WITHHOLDING WRITTEN PROPOSALS PROHIBITED. (a) Listing brokers shall permit access to listed property for showing purposes, to all buyers and persons assisting or advising buyers, with-

out unreasonable delay, unless the buyer's or other person's access is contrary to specific written instructions of the seller.

(b) Licensees shall promptly present all written proposals received to the licensee's client or customer. Licensees shall not withhold any written proposal from presentation pending the party's action on a written proposal previously presented.

(3) FAIR PRESENTATION OF WRITTEN PROPOSALS. (a) Licensees shall present all written proposals in an objective and unbiased manner to their clients and customers. Licensees shall inform their clients and customers of the advantages and disadvantages of all submitted written proposals.

(b) A listing broker or the listing broker's employee may not submit his or her own offer to purchase a property which the broker has listed if the broker or broker's employee has knowledge of the terms of any pending offer, except that a broker may arrange for a guaranteed sale at the time of listing.

(4) NOTIFICATION OF ACTION ON WRITTEN PROPOSAL. Licensees shall promptly inform their clients and customers whether the other party has accepted, rejected, or countered their written proposal. A licensee shall immediately provide a written statement to the other party's broker that includes the date and time when the written proposal was presented when such a statement is requested by the other party or the other party's broker. A licensee shall immediately provide a written statement to the other party's broker that includes the date and time when the written proposal was rejected or had expired without acceptance when such a statement is requested by the other party or the other party's broker.

(5) NEGOTIATION THROUGH BROKER. A licensee may not negotiate a sale or lease of real estate directly with a party if the licensee knows that the party has an unexpired written contract in connection with the real estate which grants to another licensee an exclusive right to sell, lease, or negotiate. All negotiations shall be conducted with the broker holding the exclusive right to sell, lease, or negotiate, and not with the party, except with the consent of the broker or where the absence of the broker, or other similar circumstances, reasonably compels direct negotiation with the party. A listing broker has no duty to investigate whether a buyer has granted a buyer's agent an exclusive right to negotiate.

Note: The Department of Safety and Professional Services' approved form, WB−36, does not grant the buyer's agent an exclusive right to negotiate.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; cr. (5), Register, March, 1981, No. 303, eff. 4−1−81; renum. from REB 15.13, Register, February, 1983, No. 326, eff. 3−1−83; renum. (3) to be (3) (a), cr. (3) (b), am. (4), Register, January, 1987, No. 373, eff. 2−1−87; am. (3) (a), Register, June, 1988, No. 390, eff. 7−1−88; am. (3) (b), r. and recr. (2), Register, July, 1993, No. 451, eff. 8−1−93; am. (3) (b) and (5), Register, January, 2001, No. 541, eff. 2−1−01; **CR 10−136: am. (title), (1), (2) (title), (b), (3) (title), (a), (4), (5) Register April 2012 No. 676, eff. 7−1−12.**

REEB 24.15 Adequate funds required. Licensees shall not issue checks upon business or trust accounts which contain insufficient funds.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; renum. from REB 15.15, Register, February, 1983, No. 326, eff. 3−1−83.

REEB 24.16 Availability of rules. Brokers shall have the rules of the department readily available in all offices for the use of all licensees.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; renum. from REB 15.16, Register, February, 1983, No. 326, eff. 3−1−83; am. Register, January, 1987, No. 373, eff. 2−1−87; correction made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671; **CR 10−136: am. Register April 2012 No. 676, eff. 7−1−12.**

REEB 24.17 Miscellaneous requirements. (1) VIOLATIONS OF LAW. Licensees may not violate, or aid or abet the violation of, any law the circumstances of which substantially relate to the practices of a real estate broker or salesperson. A licensee who has been convicted of a crime shall send to the board within 48 hours after the judgment of conviction a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction in order that the board may determine whether the circumstances of the crime of which the licensee was convicted are substantially related to the practice of a real estate broker or salesperson, pursuant to s. 111.335 (1) (c), Stats.

(2) CONVICTION. The board may discipline a licensee on the basis of a conviction of any crime, the circumstances of which substantially relate to the practice of real estate. A certified copy of a judgment of a court of record showing such conviction, within this state or without, shall be presumptive evidence of conviction.

(3) VIOLATION OF STATUTES, ADMINISTRATIVE CODE AND DISCIPLINARY ORDERS. Licensees shall not violate any provisions or terms or conditions of, or aid or abet the violation of ch. 452, Stats., chs. REEB 11 to 26 or any disciplinary order of, the board.

(4) IMPAIRED PRACTICE. Licensees shall not render services while the ability of the licensee to competently perform duties is impaired by mental or emotional disorder, drugs or alcohol.

(5) DUTY TO COOPERATE WITH THE BOARD AND THE DEPARTMENT. Licensees and applicants shall respond to the department and the board regarding any request for information within 30 days of the date of the request.

History: Cr. Register, February, 1980, No. 290, eff. 3−1−80; am. (2), Register, December, 1980, No. 300, eff. 1−1−81; renum. from REB 15.17 and am. (2), Register, February, 1983, No. 326, eff. 3−1−83; am. (1), Register, January, 1986, No. 373, eff. 2−1−87; renum. (2) and (3) to be (3) and (4), cr. (2), Register, June, 1988, No. 390, eff. 7−1−88; am. (3), Register, July, 1998, No. 511, eff. 8−1−98; correction in (1), (3) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671; **CR 10−136: am. (1), cr. (5) Register April 2012 No. 676, eff. 7−1−12.**

Chapter REEB 25

EDUCATION

REEB 25.005 Authority.
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REEB 25.08 Investigation and review.

Note: Chapter REB 16 as it existed on October 31, 1979, was repealed and a new Chapter REB 16 was created effective November 1, 1979. Renumbered chapter RL 25, effective March 1, 1983. Chapter RL 25 was renumbered chapter REEB 25 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

REEB 25.005 Authority. The following rules are adopted pursuant to ss. 227.11 (2), 452.05, 452.07, 452.09 (2) and (3) and 452.12 (5) (c), Stats.

History: Cr. Register, October 1979, No. 286, eff. 11−1−79; renum. from REB 16.005 and am. Register, February, 1983, No. 326, eff. 3−1−83; am. Register, January, 1992, No. 433, eff. 2−1−92.

REEB 25.01 Definitions. As used in this chapter, unless the context otherwise specifically requires:

(1) "Accredited institution of higher education" means a law school accredited by the American bar association or other schools accredited by one of the regional institutional accrediting commissions or associations which have been recognized by the U.S. department of education.

(2) "Board" means the real estate examining board.

(2m) "Classroom education" means the provision of educational programs or courses to one or more students in a setting in which either an instructor is physically present with the students or a representative of an approved school is physically present with the students for the purpose of taking attendance and providing instruction by audiotape, cable television, satellite line or other similar method and the instructor is available for student questions by telephone or E−mail, or by a continuous 2−way audio or audiovisual connection.

(3) "Continuing education course" means an approved segment of a continuing education program required by the board pursuant to s. 452.05 (1) (d), Stats.

(4) "Continuing education program" means the total number of continuing education hours or subjects required by the board pursuant to s. 452.05 (1) (d), Stats.

(5) "Credit course" means a course which can be applied toward an associate degree or higher degree at an accredited institution of higher education.

(5m) "Distance education" means the provision of educational programs or courses without an instructor or a representative of an approved school physically present with the students. "Distance education" includes, but is not limited to, the delivery of educational programs and courses on CD−ROM, computer disk, or the Internet.

(6) "Evidence of attendance" means an official transcript, student grade report, or board−approved certificate showing satisfactory completion of educational programs or courses.

(7) "Hour" means a period of 50 minutes of actual instruction and shall not include time spent in writing tests or examinations given by the school.

(8) "Noncredit program" means an educational program which does not satisfy requirements for an associate degree or higher degree at the school offering the educational program.

History: Cr. Register, October, 1979, No. 286, eff. 11−1−79; renum. from REB 16.01 and am. (1) and (6), Register, February, 1983, No. 326, eff. 3−1−83; renum. (1) to (5) to be (2), (7), (5), (8), (1) and am. (8), cr. (3) and (4), am. (6), Register, January, 1992, No. 433, eff. 2−1−92; am. (1), Register, July, 1998, No. 511, eff. 8−1−98; cr. (2m), (5m), am. (3), (4) and (7), Register, August, 1999, No. 524, eff. 9−1−99; correction in (2) to (4), (6) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.

REEB 25.02 Educational requirements of applicant for an original real estate broker's license. (1) EDUCATIONAL REQUIREMENTS. Each applicant for an original real estate broker's license shall satisfy any one of the following requirements:

(a) Present evidence satisfactory to the board of successful completion, within 5 years before application for a license, of the educational program in sub. (2), which has been approved in accordance with this chapter, and either satisfy the salesperson's educational requirements in s. REEB 25.03 (3) or present evidence satisfactory to the board of licensure as a salesperson.

(b) Submit proof that the applicant has received 20 semester hour credits in real estate or real estate related law courses from an accredited institution of higher education. A quarter hour credit equals 2/3 of a semester hour credit.

(c) Submit proof that the applicant is licensed to practice law in Wisconsin.

(2) BROKER'S PRE−LICENSE PROGRAM. The educational program for applicants for an original real estate broker's license shall cover all of the following topics and shall be designed so that if the educational program were presented as classroom education, it would be presented in no less than 72 hours:

(a) *Contracts.* 1. Definition of a contract.

a. Contract versus agreement.

2. Elements of a contract.

a. Offer.

b. Acceptance.

c. Consideration.

d. Competent parties.

3. Time is of the essence.

4. Acceptance versus counteroffers.

5. The law of conveyances.

a. Conveyance defined.

b. Requirements for a valid conveyance.

6. Agreement to arbitrate real estate transaction disputes — s. 788.015, Stats.

7. Commercial real estate commission lien — s. 779.32, Stats.

(b) *Approved forms.* 1. The forms approval process.
a. Forms committee.
b. Real estate examining board.
c. Department of safety and professional services.
2. The authorized practice of law.
a. Reynolds v. Dinger, 14 Wis. 2d 193.
b. Chapter REEB 16.
3. Review of forms.
a. Listing contract.
b. Offer.
c. Counteroffer.
d. Amendment.
e. Buyer agency agreement.
f. Lease.
g. Grant of option.
h. Bill of sale.
i. Offer to exchange property with acceptance.
j. Cancellation and mutual release.
k. State bar forms — s. REEB 16.03 (1).
L. Uniform commercial code forms.
m. Forms used in other states.
4. Developing a form and contingency manual.
5. Supervising salesperson's use of approved forms.
(c) *Trust accounts, escrow, closing statement.* 1. Trust accounts — ch. REEB 18.
a. Trust account definition.
b. Trust funds definition.
c. When is a trust account required.
d. Procedure to open a trust account.
e. Procedure to open an interest bearing trust account.
f. Authorization to sign trust account checks.
g. Deposit of trust funds.
h. Disbursement of trust funds.
i. Bookkeeping system.
2. Escrow agreement procedures.
a. Escrows requiring separate escrow agreements.
b. Pre−closing earnest money escrows.
c. Post closing escrows.
d. Escrows not requiring separate escrow agreements.
e. Drafting escrow agreements.
3. Closing procedures.
a. Licensees are not required by license law to perform closings.
b. Choosing a closing statement.
c. Closing preparation procedures.
d. Setting a closing date.
e. Preparing closing documentation.
f. Closing procedures.
g. Post closing procedures.
(d) *Business management and marketing.* 1. The legal environment.
a. Licensure.
b. Legal concerns.
c. Policy manual — s. REEB 17.08.
2. The business plan.
a. Form of ownership.
b. Start up.
c. Capital budget.
d. Operation budget.
e. Marketing strategies.
3. Professional services.
a. Attorneys.
b. Accountants.
4. Operational policies.
a. Policy and procedures manual.
b. Independent contractors agreement.
(e) *Financial and office management.* 1. Financial management.
a. System of income and expense accounting.
b. Forms used in all systems.
c. Accounting for deposits.
d. Accounting for payroll.
e. General disbursements.
f. Accounts used for handling funds.
g. Bank reconciliations.
h. Financial reports.
2. Budgeting.
a. Definition of a budget.
b. Purpose of the budget.
c. Comparison of budget income and expenses.
d. Preparing the budget.
3. Office management — ch. REEB 15.
a. Retention of records.
(f) *Personnel.* 1. Hiring.
a. General criteria.
b. Determining needs.
c. Personnel selection.
d. Equal opportunity.
e. Workers' compensation.
2. Contracts.
a. Employee.
b. Independent contractor.
3. Policy manual.
a. Purpose.
b. Company history and philosophy.
c. Development and implementation.
d. Termination.
4. Training.
5. Licensure and supervision of employees — ch. REEB 17.
(g) *Business ethics.* 1. Dealing with the public.
a. Principal and agent relationship — s. REEB 24.025.
Note: Section REEB 24.025 was repealed eff. 5−1−12.
b. Treating all parties fairly — s. REEB 24.025.
Note: Section REEB 24.025 was repealed eff. 5−1−12.
c. Avoid discrimination — s. REEB 24.03 (1).
d. Competence in area of service — s. REEB 24.03 (2).
e. Legal counsel not to be discouraged — s. REEB 24.06.
f. Tie−ins — s. REEB 24.075.
g. Agreements in writing — s. REEB 24.08.
h. Misleading market values — s. REEB 24.09.
i. No net listings — s. REEB 24.10.
2. Advertising — s. REEB 24.04.
a. False ads.
b. Disclosure to the public.
c. Obtain permission.
d. Advertised price.
3. Offers — ss. REEB 24.12, 24.13.
a. Confidentiality.
b. Draft and submit all offers.
c. Submit promptly.
d. Present fairly.
e. Prompt notification.
4. Self−dealing — s. REEB 24.05.

a. Disclosure of profits.
b. Disclosure of intent.
c. Property owned by licensee.
d. Referral of service.
e. Compensation from more than one party.
5. Disclosure — s. REEB 24.07.
a. Material facts.
b. Property inspection.
c. Agency.
6. Dealings with fellow licensees.
a. Negotiations through listing broker — s. REEB 24.13 (5).
b. Obtain seller's permission for subagent — s. REEB 24.07 (8) (b) 2.
c. Confidentiality of offer — s. REEB 24.12.
d. Disclose material facts — s. REEB 24.07 (2).
e. False information — s. REEB 24.07 (3).
f. Disclose buyer agent and seller subagent — s. REEB 24.07 (8).
g. Timely transfer of earnest money — s. REEB 18.08.
7. Dealings with licensee and salespeople.
a. Licensee supervision — s. REEB 17.08.
b. Office supervision – s. REEB 17.08.
(h) *Consumer protection.* 1. Disclosure.
a. Property inspections — s. REEB 24.07 (1) (a).
b. Investigation of other facts — s. REEB 24.07 (1) (b).
c. Use of third party inspectors — s. REEB 24.07 (2).
d. Wisconsin statutes s. 452.23, Stats.
e. Civil liability for misrepresentation.
f. Seller's disclosure duties — ch. 709, Stats.
g. Buyer's inspection obligation.
2. Fair housing.
a. Federal law.
b. State of Wisconsin law.
c. Local fair housing law.
d. Sanctions for violations.
e. Testers and fair housing organizations.
f. Conduct prohibited by fair housing law.
g. Responding to fair housing questions.
h. Instituting equal professional service procedures.
3. Antitrust: conspiracy and group boycotts.
a. Section 1 of the Sherman Act.
b. "Conspiracy" requirement.
c. "Restraint of trade" requirement.
d. Compensation and "prices" which have been fixed.
e. Situations creating inferences of price fixing.
f. How to respond to antitrust situations.
g. Elements same as price fixing — conspiracy and restraint of trade.
h. Situations creating inference of boycott.
i. Good boycotts: sanctions necessary to enforce reasonable industry self regulation.
4. Complaint handling procedures.
a. Consumer satisfaction.
b. Liability avoidance.
c. Feedback on fair housing or other law violations.
d. Prevent complaint through education.
e. Document the complaint handling program in policy and procedures manual.
f. Inform the parties of the complaint handling program.
g. Dispute resolution systems.
5. Environmental factors.
a. Underground storage tanks: registration and closure.
b. Asbestos.
c. Radon.
cm. Lead−based paint.
d. Procedures for "high risk" properties.
e. Wetlands and floodplain.
6. Education buyers and sellers.
a. Property inspection and disclosure of defects.
b. Earnest money procedures.
c. Licensees' responsibilities and expertise.
d. Utilizing third party experts.
(i) *Specialty areas.* 1. Property management.
a. Management contracts.
b. Insurance liability.
c. Security deposits.
d. Breach of lease.
e. Property inspections.
f. Tenant and landlord rights and obligations — ch. ATCP 134.
g. Rules regarding negotiating leases.
2. Business opportunities.
a. Special expertise and licensing requirements — s. REEB 24.03.
b. Approved forms.
c. Bulk sales law.
3. Selling specialized properties as a brokerage activity.
4. Alternative marketing methods.
a. Exchanges.
b. Installment sales.
c. Syndication.
d. Cooperatives.
5. Mortgage banking.
a. Definition of mortgage banker, loan originator, loan solicitor.
b. When separate registration is needed.
c. Legality of referral fees, "Real Estate Settlement Procedures Act."
6. Real estate appraisal.
a. Definition.
b. When separate certification is needed.
7. Farms.
a. Specialized forms.
8. Auctions.
a. Auctioneer requires real estate license to call auction of real estate.
9. Mobile homes.
a. When a real estate license or separate license is required.
10. Time−share.
a. Familiarity with ch. 707, Stats., when selling time−shares.

History: Cr. Register, October, 1979, No. 286, eff. 11−1−79; cr. (4), Register, April, 1981, No. 304, eff. 5−1−81; am. (1), (4) (intro.) and (b), Register, June, 1982, No. 318, eff. 7−1−82; renum. from REB 16.02 and am. (1) and (4) (intro.), Register, February, 1983, No. 326, eff. 3−1−83; am. (1), (3) (intro.), (a) (intro.), (b) (intro.) and (c) (intro.), r. and recr. (2), cr. (5), Register, February, 1987, No. 374, eff. 6−1−87; r. and recr. Register, January 1992, No. 433, eff. 2−1−92; am. (1) (a), (2) (h), 1. f., (3), cr. (2) (a) 6., Register, September, 1993, No. 453, eff. 10−1−93; cr. (2) (h) 5. cm., r. (3), Register, July, 1997, No. 499, eff. 8−1−97; am. (1) (intro.), (a) and (b), Register, July, 1998, No. 511, eff. 8−1−98; am. (1) (intro.), (a), (2) (intro.) to (g) (intro.), 2. to 5., (h) and (i), cr. (2) (a) 7., Register, August, 1999, No. 524, eff. 9−1−99; correction in (1) (a), (2) (b) 1. b., c., 2. b., 3. k., (c) 1. (intro.), (d) 1. c., (e) 3. (intro.), (f) 5., (g) 1. a. to i., 2. (intro.), 3. (intro.), 4. (intro.), 5. (intro.), 6. a. to g., 7. a., b., 1. a. to c., (i) 2. a. made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671; **CR 10−136: am. (2) (intro.), (g) 7. b. Register April 2012 No. 676, eff. 7−1−12.**

REEB 25.025 Satisfaction of broker's educational requirements by out−of−state applicants. (1) An appli-

cant who has held an active real estate broker's license in another licensing jurisdiction within the 2 year period prior to filing an application for an original real estate broker's license in Wisconsin may satisfy the broker's educational requirements of s. REEB 25.02 (1) by submitting evidence of one of the following:

(a) Completion of the educational programs under sub. (2) and s. REEB 25.035 (2) at a school approved by the board under s. REEB 25.05 or 25.06.

(b) Satisfaction of the requirements in s. REEB 25.02 (1) (b) or (c).

(2) The contents of the educational program under this subsection shall include all of the following and shall be designed so that if the educational program were presented as classroom education, it would be presented in no less than 3 hours:

(a) *Broker−only contracts and contract issues.* 1. Reynolds v. Dinger, 14 Wis. 2d 193.

2. State bar forms — s. REEB 16.03 (1).

3. Uniform commercial code forms — s. REEB 16.03 (1).

4. Forms used in other states.

5. Developing forms and contingency manual.

6. Supervising salespersons' use of approved forms.

7. Commercial real estate broker's commission lien — s. 779.32, Stats.

(b) *Miscellaneous Wisconsin laws.* 1. Change of name, address or trade name — ch. REEB 23.

2. Trust accounts — s. 452.13, Stats., and ch. REEB 18.

a. Procedure to open trust account.

b. Authorization to sign trust account checks.

c. Bookkeeping system.

3. Policy manual — s. REEB 17.08.

(c) Review, update or more in−depth coverage of any of the contents of the salesperson's educational course in s. REEB 25.035 (2).

History: Cr. Register, July, 1997, No. 499, eff. 8−1−97; am. (1) (intro.), (a), (b), (2) (intro.), (a), (b) (intro.) and (c), cr. (2) (a) 7., Register, August, 1999, No. 524, eff. 9−1−99; correction in (1) (intro.), (a), (b), (2) (a) 2., 3., (b) 1., 2. (intro.), 3., (c) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

REEB 25.03 Educational requirements of applicant for an original real estate salesperson's license. **(1)** GENERAL REQUIREMENTS. Each applicant for an original real estate salesperson's license shall present evidence of attendance, within 5 years before application for a license, at the educational program in sub. (3), which has been approved by the board in accordance with s. REEB 25.05 or 25.06.

(2) TEN SEMESTER−HOUR WAIVER. The educational requirement in sub. (1) is not required of an applicant who submits proof that the applicant has received 10 semester hour credits in real estate or real estate related law courses at an accredited institution of higher education. A quarter hour credit equals 2/3 of a semester hour credit.

(3) SALESPERSON'S PRE−LICENSE PROGRAM. The educational program for applicants for an original real estate salesperson's license shall cover all of the following topics and shall be designed so that if the educational program were presented as classroom education, it would be presented in no less than 72 hours:

(a) *Real property.* 1. Land, real estate and real property.

2. Real property versus personal property.

3. Classification of fixtures.

4. Characteristics of real estate.

5. Types of home ownership.

6. Mobile homes — s. 70.043, Stats.

7. Ownership expenses.

8. Property features.

9. Investment considerations.

10. Tax benefits for home ownership.

11. Homeowner's insurance.

(b) *The real estate business.* 1. Real estate specialties.

2. The real estate market.

3. Factors affecting supply and demand.

4. Business cycles.

5. Real estate practice — ch. 452, Stats.

(c) *Real estate brokerage.* 1. Law of agency.

2. Creation and termination of agency.

3. Fiduciary duties.

4. Responsibilities to third parties.

5. Broker's and salesperson's compensation.

6. Antitrust laws.

7. Independent contractor versus employee.

8. Broker−to−broker relationships.

9. Sales associate−to−sales associate relationships.

(d) *Listing agreements.* 1. Listing property.

2. Listing agreements — ch. REEB 16.

3. Special listing provisions.

4. Termination of listings.

5. Obtaining listings.

6. Pricing the property.

7. Disclosures.

8. Home warranties.

(e) *Interests in real estate.* 1. Government powers.

2. Estates in land.

3. Encumbrances.

4. Water rights.

5. Forms of ownership.

6. Trusts.

7. Ownership by business organizations.

8. Cooperatives.

9. Time−shares — ss. 70.095, 707.02, 707.05, 707.40, 707.47, 707.49, Stats.

10. Condominiums — ss. 703.08, 703.21, 703.33, Stats.

11. Homestead — ss. 706.01 (7), 766.605, Stats.

(f) *Legal descriptions.* 1. Methods of describing real estate.

2. Land units and measurements.

3. Measuring elevations.

(g) *Taxes and other liens.* 1. Liens and their effects on title.

2. Tax liens.

3. General tax assessment, equalization, tax bills.

4. Mortgage liens.

5. Mechanics liens.

6. Judgments.

7. Estate and inheritance tax liens.

8. Other liens.

9. Taxes — ss. 74.15, 74.47 (1) and (2), Stats.

10. Taxation and transfer fee — ss. 77.22, 77.27, Stats.

(h) *Real estate contracts.* 1. Contract law.

2. Elements of a valid contract.

3. Performance of contract.

4. Discharge of contract.

5. Default or breach of contract.

6. Forms used in real estate — ch. REEB 16.

a. Listing agreements — s. 240.10, Stats.

b. Offers to purchase.

c. Buyer agency agreements.

d. Counteroffers.

e. Amendments.

f. Understanding closing statements.

g. Disclosure forms: seller condition report; agency; buyer and seller disclosure.

h. Addendums.

i. Cancellation and mutual release agreements.

7. Agreement to arbitrate real estate transaction disputes — s. 788.015, Stats.

(i) *Title records and transfers of title.* 1. Requirements of a valid conveyance — ss. 240.10, 706.02, 706.03, Stats.

2. Types of deeds.

3. Involuntary alienation.

4. Probate.

5. Transfer of title by will and descent.

6. Public records and recording.

7. Evidence of title.

8. Uniform commercial code.

9. Other conveyances.

(j) *Real estate finance and basic math.* 1. Buyer qualification.

2. Mortgage instruments.

3. Payment plans.

4. Provisions for default: assignment; release; subject to.

5. Land contracts.

6. Secondary mortgage market.

(k) *Appraisal — market analysis.* 1. Basic principles of value.

2. Direct market comparison approach.

3. Cost approach.

4. Income approach.

5. Appraisal process.

(L) *Fair housing laws.* 1. Equal opportunity in housing.

2. Federal fair housing law.

3. Blockbusting, steering, redlining.

4. Equal rights — s. 106.50, Stats.

5. Equal opportunity — s. 66.1011, Stats.

6. Organizations.

(m) *Ethical real estate practices.* 1. Chapter REEB 24.

2. Ethical business conduct.

(n) *Leases.* 1. Leasehold estates.

2. Standard lease provisions.

3. Lease documents.

4. Legal principles of leases.

5. Assignment and subleasing.

6. Improvements.

7. Maintenance.

8. Breach.

9. Residential rental practices — ss. ATCP 134.02, 134.06, 134.09, and 134.09.

(o) *Property management.* 1. Functions of property manager.

2. Management agreement.

3. Management considerations.

4. Renting and maintaining the property.

5. Risk management.

(p) *Land use control and development.* 1. Public controls.

2. The master plan.

3. Zoning.

4. Subdivision regulations.

5. Private land−use controls.

6. Building codes.

7. Land development.

8. Subdividing.

9. Interstate land sales full disclosure act.

10. Platting and subdivisions — ss. 236.01, 236.02, 236.03, 236.31, 236.33, 236.335, 236.35, Stats.

(q) *Environmental concerns.* 1. Radon.

2. Asbestos.

2m. Lead−based paint.

3. Toxic waste.

4. Underground storage tanks — ch. SPS 310.

5. Floodplains — s. 87.30, Stats. and ss. NR 116.01, 116.06.

6. Flood insurance.

7. Wetlands — s. 23.32, Stats.

8. Farmland preservation — ss. 91.01, 91.60 to 91.70, Stats.

9. Rental unit energy efficiency standards — ss. SPS 367.03, 367.08.

10. Disclosure documents — s. 452.23, Stats., and ch. 709, Stats. and s. REEB 24.07.

11. Other.

(r) *Miscellaneous Wisconsin license laws.* 1. Chapter REEB 15 — documents and records.

2. Chapter REEB 16 — contractual forms.

3. Chapter REEB 17 — licensure and supervision of employees.

4. Chapter REEB 18 — trust accounts.

5. Chapter REEB 23 — change of name, address, trade names.

6. Commercial bulk sales — ss. 406.101, 406.102, 406.103, 406.104, 406.105, 406.107, 406.108, Stats.

Note: Sections 406.101 to 406.108, Stats., were repealed by 2009 Wis. Act 110.

7. Property provisions for aliens and corporations — ss. 710.01, 710.02, Stats.

8. Property rights of married persons — ss. 766.31, 766.51, 766.60, 766.63, Stats.

9. Mortgage banking — s. 224.71, Stats., and s. DFI−Bkg 40.03 (4) (b).

Note: Section DFI−Bkg 40.03 (4) (b) no longer exists, eff. 1−1−10.

History: Cr. Register, October, 1979, No. 286, eff. 11−1−79; am. (2) (intro.) and r. and recr. (2) (b), Register, April, 1981, No. 304, eff. 5−1−81; am. (2) (b), Register, June, 1982, No. 318, eff. 7−1−82; renum. from REB 16.03 and am. (2), Register, February, 1983, No. 326, eff. 3−1−83; r. and recr. Register, February, 1987, No. 374, eff. 6−1−87; r. and recr. Register, January, 1992, No. 433, eff. 2−1−92; am. (1), (3) (q) 10., (4), cr. (3) (h) 7., Register, September, 1993, No. 453, eff. 10−1−93; cr. (3) (q) 2m., r. (4), Register, July, 1997, No. 499, eff. 8−1−97; am. (3) (r) 9., Register, July, 1998, No. 511, eff. 8−1−98; am. (1), (3) (intro.), (a) (intro.), 6., (b) to (L) (intro.), 4. and (m) to (r), Register, August, 1999, No. 524, eff. 9−1−99; correction in (3) (L) 4. and 5. made under s. 13.93 (2m) (b) 7., Stats., Register November 2007 No. 623; correction in (3) (q) 4. made under s. 13.92 (4) (b) 7., Stats., Register January 2011 No. 661; correction in (1), (3) (d) 2., (h) 6. (intro.), (m) 1., (q) 4., 8., 9., 10., (r) 1. to 5. made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

REEB 25.035 Satisfaction of salesperson's educational requirements by out−of−state applicants. (1) An applicant who has held an active real estate salesperson's license in another licensing jurisdiction within the 2−year period prior to filing an application for an original real estate salesperson's license in Wisconsin may satisfy the educational requirements of s. REEB 25.03 (3) if the applicant submits evidence of one of the following:

(a) Completion of the educational program in sub. (2) at a school approved by the board under s. REEB 25.05 or 25.06.

(b) Satisfaction of the 10 semester−hour waiver in s. REEB 25.03 (2).

(2) The contents of the educational program under this subsection shall include all of the following and shall be designed so that if the educational program were presented as classroom education, it would be presented in no less than 13 hours:

(a) *Contracts.* 1. The law of conveyances.

a. Conveyance defined — s. 706.01, Stats.

b. Requirements for a void conveyance — ss. 706.02, 706.03, Stats.

2. Chapter REEB 16.

3. Review of forms approved by the board.

a. Listing contracts.

b. Offers to purchase.

c. Counteroffer and multiple counteroffer.

d. Amendment/notice.

e. Buyer agency agreement.

f. Grant of option.

g. Bill of sale.

h. Exchange agreement.

i. Cancellation and mutual release.

j. Other approved forms.

(b) *Agency.* 1. Duties owed to parties and clients. — s. 452.133, Stats.

2. Requirement for an agency agreement and disclosure of agency — s. 452.135, Stats.

3. Multiple representation — s. 452.137, Stats.

Note: Section 452.137, Stats., was repealed by 2005 Wis. Act 87.

4. Revisions to common law duties and responsibilities — s. 452.139, Stats.

(c) *Business conduct.* 1. Direct contact with the public.

a. Competence in area of service — s. REEB 24.03.

b. Tie−ins — s. REEB 24.075.

c. Agreements in writing — s. REEB 24.08.

d. Misleading market values — s. REEB 24.09.

e. Net listings — s. REEB 24.10.

2. Advertising — s. REEB 24.04.

3. Completing and presenting offers — ss. REEB 24.12, 24.13.

a. Confidentiality.

b. Drafting and submitting offers.

c. Prompt delivery to buyer.

d. Fair presentation of offers.

e. Prompt notification.

4. Self−dealing — s. REEB 24.05.

a. Dual compensation.

b. Disclosure of interest.

c. Referral services.

d. Disclosure of profits.

e. Disclosure of licensure.

(d) *Consumer protection.* 1. Property inspections — s. REEB 24.07 (1) (a).

2. Inquiry by listing broker — s. REEB 24.07 (1) (b).

3. Disclosure of material adverse facts — s. REEB 24.07 (2).

4. Disclosure of material suggesting adverse material facts — s. REEB 24.07 (3).

5. Disclosure of side agreements — s. REEB 24.07 (4).

6. Reliance upon third parties — s. REEB 24.07 (5).

7. Investigations and inspections — s. 452.23, Stats.

8. Civil liability for misrepresentation.

9. Seller's disclosure duties — ch. 709, Stats.

(e) *Fair housing.* Wisconsin law — s. REEB 24.03 (1), ss. 66.1011 and 106.50, Stats.

(f) *Environmental factors.* 1. Underground storage tanks — ch. SPS 310.

2. Floodplains — s. 87.30, Stats., ss. NR 116.01, 116.06.

3. Wetland — s. 23.32, Stats.

4. Farmland preservation — ss. 91.60 to 91.70, Stats.

5. Rental unit energy efficiency standards — ss. SPS 367.03, 367.08.

(g) *Trust accounts and escrows.* 1. Trust accounts — s. 452.13, Stats., ch. REEB 18.

a. Definition of trust account.

b. Interest−bearing and non−interest−bearing accounts.

c. Definition of trust funds.

d. When a trust account is required.

e. Deposit of trust funds.

2. Escrow agreement procedures.

a. Escrows requiring separate escrow agreements.

b. Pre−closing earnest money escrows.

c. Post−closing escrows.

d. Escrows not requiring separate escrow agreement.

e. Drafting escrow agreements.

(h) *Miscellaneous issues.* 1. Condominiums — ss. 703.08, 703.21, 703.33, Stats.

2. Homestead — ss. 706.01 (7), 766.605, Stats.

3. Taxes — ss. 74.15, 74.47 (1) and (2), Stats.

4. Taxation and transfer fee — ss. 77.22, 77.27, Stats.

5. Residential rental practices — ss. ATCP 134.02, 134.06, 134.09.

6. Platting and subdivisions — ss. 236.01 to 236.03 and 236.31 to 236.35, Stats.

7. Documents and records — ch. REEB 15.

8. Licensure and supervision of employees — ch. REEB 17.

9. Commercial bulk sales — ss. 406.101 to 406.108, Stats.

Note: Sections 406.101 to 406.108, Stats., were repealed by 2009 Wis. Act 110.

10. Property provision for aliens and corporations — ss. 710.01, 710.02, Stats.

11. Property rights of married persons — ss. 766.31, 766.51, 766.60, 766.63, Stats.

12. Mortgage banking — s. 224.71, Stats., s. DFI−Bkg 40.03 (4) (b).

Note: Section DFI−Bkg 40.03 (4) (b) no longer exists, eff. 1−1−10.

History: Cr. Register, July, 1997, No. 499, eff. 8−1−97; rn. (1) to be (1) (intro.) and am., cr. (1) (a) and (b), Register, July, 1998, No. 511, eff. 8−1−98; am. (1), (2) (intro.), (a) to (h), Register, August, 1999, No. 524, eff. 9−1−99; corrections in (2) (e) made under s. 13.93 (2m) (b) 7., Stats., Register November 2007 No. 623; correction in (2) (f) 1. made under s. 13.92 (4) (b) 7., Stats., Register January 2011 No. 661; correction in (1) (intro.), (a), (b), (2) (a) 2., 3., (c) 1. a. to e., 2., 3. (intro.), 4. (intro.), (d) 1. to 6., (e), (f) 1., 5., (g) 1. (intro.), (h) 7., 8. made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

REEB 25.05 Requirements for approval of pre−license education courses taken for academic credit at an accredited institution of higher education. (1) A school seeking initial approval of pre−license credit courses in real estate shall submit its application on a form provided by the department. The board may require the following information and materials:

(a) The department in the school which is offering the courses.

(b) The method of instruction for each course.

(c) The course number and title.

(d) Detailed outlines of each course with specific allocations of classroom hours to each topic.

(e) A current school bulletin.

Note: An applicant may obtain a copy of the Application for Approval of Pre−license Credit Courses, Form #828, from the Wisconsin Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) The board may approve a pre−license credit course if it alone or in conjunction with one or more other courses covers all of the contents and the required number of hours, as provided in s. REEB 25.02 (2) or 25.03 (3).

(3) When approving one or more pre−license credit courses, the board shall specify the single course or combination of courses which cover either the topics in s. REEB 25.02 (2) or the topics in s. REEB 25.03 (3).

(4) A school shall inform the board of any changes in the information it submitted in an application form within 10 days following the date of the change.

(5) A school may not discriminate against anyone on the basis of sex, race, color, sexual orientation as defined in s. 111.32 (13m), Stats., handicap, religion, age, physical disability, or national origin in their educational programs.

History: Cr. Register, October, 1979, No. 286, eff. 11−1−79; renum. from REB 16.055 and am. Register, February, 1983, No. 326, eff. 3−1−83; renum. from RL 25.055, Register, February, 1987, No. 374, eff. 6−1−87; r. and recr. Register, January, 1992, No. 433, eff. 2−1−92; am. (3), r. (6), Register, August, 1999, No. 524, eff. 9−1−99; correction in (1) (intro.), (2), (3), (4) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

REEB 25.06 Requirements for approval of pre−license noncredit programs and instructors. (1) APPROVAL OF PROGRAMS. (a) A school seeking initial approval from the board of pre−license educational noncredit programs or courses shall submit its application on a form provided by the department.

Note: An applicant may obtain a copy of the Application for Approval of Pre−license Noncredit Programs, Form #830, from the Wisconsin Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(b) The board may require a school seeking initial approval and reapproval of pre−license noncredit programs or courses to describe or furnish its organizational structure, registration policies, fee schedules, promotional materials, detailed outlines of each program or course with specific allocations of classroom hours to each topic presented as classroom education, student records system, the names and qualifications of instructors, the method of instruction, the method for evaluating instructors and a summary of evaluations conducted, and the time, date and location of each program.

(c) A school shall inform the board of any changes in the information it submitted in an application form within 10 days following the date of the change.

(d) A school may not discriminate against anyone on the basis of sex, race, color, sexual orientation as defined in s. 111.32 (13m), Stats., handicap, religion, age, physical disability, or national origin in their educational programs.

(e) A school seeking the approval of pre−license noncredit programs or courses presented as distance education is not required to designate the number of hours of instruction. However, it shall describe to the board how it will do all of the following:

1. Ensure that instructors approved by the board under sub. (2) are available to the students at reasonable times and by reasonable means.

2. Ensure that the distance education programs and courses will sufficiently cover the required subjects.

3. Provide reasonable oversight to ensure that students who complete the distance education program are the enrolled students.

4. Ensure that the school's distance education program and courses will provide a reasonable opportunity for student self−evaluation of mastery.

(2) (a) Instructors of pre−license educational noncredit programs shall be approved by the board. Instructors shall be knowledgeable in the subject which they are teaching. The board may limit its approval to specific content areas set forth in ss. REEB 25.02 (2) and 25.03 (3). Instructors shall possess at least one of the following minimum qualifications:

1. Be an instructor of real estate courses who is or has been engaged in the practice of teaching at an accredited institution of higher education.

2. Be a properly licensed or certified person by the board or other governmental agency who is engaged in the real estate aspects of appraising, financing, marketing, brokerage management, real property management, real estate counseling, real property law, or other related subjects and has been for at least 5 years continuously engaged in such practice.

3. Be a member of the state bar of Wisconsin who is engaged in the field of real estate−related law.

4. Be a person who, in the judgment of the board, is qualified by experience or education, or both, to supervise a course of study.

Note: An applicant may obtain a copy of the Application for Approval of Instructor, Form #831, from the Wisconsin Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(b) An instructor whose real estate license has been limited, suspended or revoked may not instruct in approved programs while the disciplinary action is in effect.

(c) A school shall make arrangements so that when instruction is provided by some means without the instructor physically present in the classroom and the students are unable to interact with the person doing the instructing another approved instructor will be present in the classroom. If the students are able to interact with the person doing the instructing a monitor, but not necessarily an approved instructor, shall be present.

History: Cr. Register, October, 1979, No. 286, eff. 11−1−79; renum. from REB 16.06 and am. Register, February, 1983, No. 326, eff. 3−1−83; am. (1) (a) 1., r. (2) (d) to (f), Register, February, 1987, No. 374, eff. 6−1−87; r. and recr. Register, January, 1992, No. 433, eff. 2−1−92; correction in (2) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1997, No. 499; am. (2) (a) 2., Register, July, 1998, No. 511, eff. 8−1−98; am. (1) (a) and (b), r. and recr. (1) (e), Register, August, 1999, No. 524, eff. 9−1−99; correction in (1) (a) to (c), (e) (intro.), 1., (2) (a) (intro.), 2., 4. made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

REEB 25.065 Continuing education requirements for brokers and salespersons. (1) Each licensed broker and salesperson, except an inactive licensee under s. 452.12 (6), Stats., shall satisfy the continuing education requirement specified in s. 452.12 (5) (c), Stats., during each licensing biennium.

Note: The contents of the continuing education programs and courses are not designated in the Wisconsin administrative code, pursuant to an exemption under s. 227.01 (13) (zj), Stats. This information may be obtained from the Wisconsin Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) A licensee may only satisfy the continuing education requirement by successfully completing the continuing education program or courses which are approved by the board before the programs or courses are conducted, except that pursuant to s. 452.12 (5) (c) 2., Stats., the licensee may take the continuing education examination conducted by the department in lieu of the education.

Note: 2011 Wis. Act 32 repealed s. 452.12 (5) (c) 2., Stats., eliminating the continuing education option for renewal. Section REEB 25.065 (2) will be repealed in future rule making by the board.

(3) A licensee shall submit evidence of completion of the continuing education requirement when applying for renewal of license. The department shall withhold issuance of the renewal license until such evidence is submitted and the licensee may not engage in the practice of real estate until having submitted such evidence and having received the license.

(5) A person who receives an original salesperson's or broker's license during a licensing biennium is not required to satisfy the continuing education requirement during the biennium in which the person receives that license.

(6) A licensee may attend more than one school in order to complete approved courses which are part of the continuing education program designated by the board under s. 452.05 (1) (d) and (g), Stats.

(6m) A licensee who attends an approved continuing education course and fails the examination given by the school at the end of the course shall retake the course and pass the course examination before being eligible to take the continuing education examination conducted by the department pursuant to s. REEB 25.075.

(7) A licensee may complete less than the complete continuing education program designated by the board under s. 452.05

(1) (d) and (g), Stats., and subsequently take the continuing education examination conducted by the department.

(8) A licensee who acts as an instructor of an approved continuing education program or course may receive credit toward satisfaction of the licensee's continuing education requirement, provided the licensee successfully completes the program or course examination, as specified in s. REEB 25.05. The licensee may not receive credit for teaching a specific course more than one time.

(9) The board may grant an extension of time for completion of the continuing education requirement by a licensee and the licensee may obtain a renewal license for the extension period for one of the following reasons:

(a) Health reasons which prevented attendance at continuing education courses or the continuing education examination;

(b) Active duty in the military service with assignment to a duty station outside Wisconsin; or

(c) Other compelling reasons beyond the control of the applicant while engaged in the real estate business.

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92; am. (6m), r. (4), r. and recr. (5), Register, September, 1993, No. 453, eff. 10−1−93; am. (7), Register, July, 1998, No. 511, eff. 8−1−98; am. (5), Register, August, 1999, No. 524, eff. 9−1−99; correction in (2), (3), (6) to (9) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

REEB 25.066 Requirements for approval of continuing education schools, courses and instructors. **(1)** A school seeking approval from the board of a continuing education program or course shall submit its application on a form provided by the department. A school shall submit an application for approval of a continuing education program or course to the board before conducting the continuing education program or course which the board has prescribed for a licensing biennium.

Note: An applicant may obtain a copy of the Request For Approval of Real Estate Continuing Education Program or Courses, Form #1747, from the Wisconsin Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) Instructors of continuing education programs and courses shall be approved by the board. Instructors shall be knowledgeable in the subject which they are teaching and shall possess at least one of the following minimum qualifications:

(a) Be an instructor of real estate courses who is or has been engaged in the practice of teaching at an accredited institution of higher education.

(b) Be a properly licensed or certified person by the board or other governmental agency who is engaged in the real estate aspects of appraising, financing, marketing, brokerage management, real property management, real estate counseling, real property law, or other related subjects and has been for at least 5 years continuously engaged in such practice.

(c) Be a member of the state bar of Wisconsin who is engaged in the field of real estate−related law.

(d) Be a person who, in the judgment of the board, is qualified by experience or education, or both, to supervise a course of study.

Note: An applicant may obtain a copy of the Application for Approval of Instructor, Form #831, from the Wisconsin Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(3) An instructor whose real estate license has been limited, suspended or revoked may not instruct in approved programs while the disciplinary action is in effect.

(4) The board may require a school seeking initial approval and reapproval of continuing education programs and courses to describe or furnish its organizational structure, registration policies, fee schedules, promotional materials, detailed outlines of each program with specific allocations of hours to each topic presented as classroom instruction, student records system, the names and qualifications of administrators and instructors, the method of instruction, a summary of evaluations conducted, information about the school's response to complaints concerning an instructor.

(5) A school shall inform the board of any changes in the information which it provided to the department in an application form within 10 days following the date of the change.

(6) The following are additional criteria for approval of continuing education programs or courses:

(a) Applicants for approval of continuing education programs or courses may not discriminate against anyone on the basis of sex, race, color, sexual orientation as defined in s. 111.32 (13m), Stats., handicap, religion, age, physical disability, or national origin in their educational programs.

(c) A school shall submit to the board with the application for approval at least 15 multiple−choice questions for each course. The school shall clearly indicate the answer to each question and the portion of the course outline to which the question relates. The questions shall comply with reasonable standards of test development and shall relate to the substantive contents of the continuing education program or course. The questions shall be the original work of the writer and not be published. A school may only make questions available to school personnel.

Note: An applicant may obtain a copy of the Continuing Education Question Development Form, Form #1746, and the Instructions for Submitting Continuing Education Questions, Form #1745, from the Wisconsin Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(d) A school shall agree to conduct an examination at the end of each continuing education program or course. The examination shall contain at least 15 multiple−choice questions for each course. The passing score shall be no less than 70%, unless the school provides substantial justification to the board for a lower score and the board approves the lower passing score.

(e) A school shall agree not to make available to students before the students take a specific examination the questions or answers to the questions. A school shall keep tests and answer sheets in a secure location at all times before and after administration of the examination.

(f) A school shall agree to inform students about the number of points of credit for each question in the examination and the passing score. It shall also provide clear instructions to students for recording their responses to the questions.

(g) A school shall agree to provide each student with a certificate of attendance at a program or course. The certificate shall comply with the requirements in s. REEB 25.07.

(j) A school may not count examination time as part of the classroom hours required in a classroom education course.

(k) A school seeking the approval of continuing education programs and courses presented as distance education is not required to designate the number of hours of instruction. However, it shall describe to the board how it will do all of the following:

1. Ensure that instructors approved by the board under sub. (2) are available to the students at reasonable times and by reasonable means.

2. Provide a reasonable level of examination security for the examination given at the end of each distance education continuing education course.

3. Sufficiently cover the subjects specified for continuing education courses.

4. Provide reasonable oversight to ensure that the students who take the examination are the enrolled students.

5. Provide a reasonable opportunity for student self−evaluation of mastery.

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92; am. (2) (intro.), (4), Register, September, 1993, No. 453, eff. 10−1−93; am. (1), r. (6) (h), Register, July, 1997, No. 499, eff. 8−1−97; am. (2) (b), Register, July, 1998, No. 511, eff. 8−1−98; am. (1), (4), and (6) (c) to (f), (j), r. (6) (b), (i), cr. (6) (k), Register, August, 1999, No.

524, eff. 9−1−99; correction in (1), (2) (intro.), (b), (d), (4), (5), (6) (c), (d), (g), (k) (intro.), 1. made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

REEB 25.07 Certification of attendance at pre−license and continuing education programs and courses. (1) ATTENDANCE REQUIREMENTS. A student shall attend all the required hours of a classroom education course and receive all the required contents of a classroom education course or a distance education course before a school may give a certificate of attendance to the student. In addition, for continuing education programs and courses, a student shall also satisfactorily complete the course examination administered by the school, as provided in s. REEB 25.066 (6) (d).

(2) CERTIFICATION OF ATTENDANCE. (a) Schools shall provide an individual certificate of attendance to all students upon satisfactory completion of education programs and courses.

(b) The board may accept an official transcript or student grade report as evidence of satisfactory completion of credit courses.

(c) Certificates for pre−license noncredit programs and all continuing education programs and courses shall meet the following criteria:

1. Clearly state the name of the school.

2. Clearly state the name of the student.

3. Clearly state the name of the program or course and whether it satisfies prelicense or continuing education requirements.

4. Clearly state the number of hours the student has successfully completed in an educational program presented as classroom education.

5. Clearly state the date of completion of the program or course.

6. Be signed by an authorized person at the school.

(d) A school shall maintain attendance records for at least 5 years after a program or course has been conducted.

History: Cr. Register, October, 1979, No. 286, eff. 11−1−79; renum. from REB 16.07 and am. (1) (a), (b) and (e) and (2), Register, February, 1983, No. 326, eff. 3−1−83; r. (1) (d) and (e) and (2), renum. (3) to be (2) and am. Register, February, 1987, No. 374, eff. 6−1−87; r. and recr. Register, January, 1992, No. 433, eff. 2−1−92; am. (1) and (2) (c) 4., Register, August, 1999, No. 524, eff. 9−1−99; correction in (1), (2) (b) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

REEB 25.075 Continuing education examination conducted by the department. (1) The department shall conduct a continuing education examination pursuant to s. 452.12 (5) (c) 2., Stats.

Note: 2011 Wis. Act 32 repealed s. 452.12 (5) (c) 2., Stats.

(2) The department shall conduct the continuing education examination during each biennial licensure period, but not from July 1 to December 31 of each even−numbered year.

(3) The continuing education examination shall cover the subjects required for continuing education approved by the board under s. 452.05 (1) (d) and (g), Stats., and shall have no less than 5 questions for each hour of instruction in classroom education courses or 5 questions for each hour of instruction if the topics presented in a distance education course were presented as a classroom education course or courses in the approved continuing education program or courses.

(5) The board shall require a minimum passing score of 70 on the continuing education examination.

(6) The board shall permit licensees who take the continuing education examination to review the examination and the examination results, as provided in s. REEB 12.025.

Note: 2011 Wis. Act 32 repealed s. 452.12 (5) (c) 2., Stats., invalidating s. REEB 25.075. Section REEB 25.075 will be repealed in future rule making by the board.

History: Cr. Register, October, 1979, No. 286, eff. 11−1−79; renum. from REB 16.075 and am. (1), Register, February, 1983, No. 326, eff. 3−1−83; r. (2), renum. (1) and am. Register, February, 1987, No. 374, eff. 6−1−87; r. and recr. Register, January, 1992, No. 433, eff. 2−1−92; am. (3), r. (4), Register, August, 1999, No. 524, eff. 9−1−99; correction in (3), (5), (6) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

REEB 25.08 Investigation and review. (1) PERIODIC REVIEW. The board, or its duly authorized representative, shall investigate and review all approved educational programs, courses, and instructors. The method of review shall be determined by the board in each case and will generally consist of the following:

(a) Consideration of information available from federal, state, or local agencies, private organizations or agencies, or interested persons.

(b) Conferences with officials or representatives of the school involved or with former students of the school.

(c) Public hearing respecting the educational program, course, or instructor involved, with adequate written notice to the school and/or instructor.

(d) Investigation by visitation to the school.

(2) UPON COMPLAINT. In addition to investigation upon its own initiation, the board may investigate any school or instructor upon receipt of a complaint from an interested person.

(3) DENIAL OR WITHDRAWAL OF APPROVAL. (a) The board may limit, suspend or revoke the approval of a school or instructor to conduct any program or course which had been approved pursuant to this chapter when the school or instructor:

1. Has falsified information on any application or certificate of attendance submitted to the department;

2. Has not complied with the conditions for approval;

3. Has given credit to students for an amount of time present in class when the actual amount was less than the credited amount;

4. Has divulged to students before administration of a continuing education course examination questions which will be used in the examination when administered;

5. Has not followed the course outline approved by the board;

6. Has provided instruction on several occasions when not adequately prepared to teach; or

7. Has violated any provisions in this chapter. Violation of subds. 1. to 4. may also be cause for disciplinary action against a licensee, pursuant to s. 452.14, Stats.

(b) If, after investigation, the board deems it proper to deny or withdraw its approval of any school, educational program, course, or instructor, the board shall follow the procedures in ch. SPS 1 for denial of approval and the procedures in ch. SPS 2 for limiting, suspending or revoking approval.

History: Cr. Register, October, 1979, No. 286, eff. 11−1−79; renum. from REB 16.08 and am. (1) (intro.), (2) and (3), Register, February, 1983, No. 326, eff. 3−1−83; am. (3), Register, January, 1992, No. 433, eff. 2−1−92; am. (3) (a), (b), Register, September, 1993, No. 453, eff. 10−1−93; correction in (1), (2), (3) (a) (intro.), 5., (b) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

Chapter REEB 26

INACTIVE LICENSES

REEB 26.01 Authority.
REEB 26.02 Inactive licensees prohibited to practice real estate.
REEB 26.03 Reinstatement of active license.

Note: Chapter RL 26 was renumbered chapter REEB 26 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

REEB 26.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 452.07 and 452.12 (6), Stats.

History: Cr. Register, February, 1987, No. 374, eff. 6−1−87; r. and recr. Register, July, 1998, No. 511, eff. 8−1−98.

REEB 26.02 Inactive licensees prohibited to practice real estate. (1) An inactive licensee may not engage in any conduct which requires a license under ch. 452, Stats.

(2) Inactive licensees are not considered to be licensees within the meaning of s. 452.01 (5), Stats.

(3) Inactive licensees may be investigated and disciplined for conduct which occurred when the licensee held an active license.

History: Cr. Register, February, 1987, No. 374, eff. 6−1−87.

REEB 26.03 Reinstatement of active license. An inactive licensee may be reinstated to active licensure by satisfaction of the requirements in s. REEB 12.04, except that the licensee shall pay the fee specified in s. 440.08, Stats., and the board may not require the licensee to pay a late renewal penalty fee.

History: Cr. Register, February, 1987, No. 374, eff. 6−1−87; am. (2), Register, March, 1990, No. 411, eff. 4−1−90; r. and recr., Register, September, 1993, No. 453, eff. 10−1−93; **correction made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.**

Chapter SPS 1

PROCEDURES TO REVIEW DENIAL OF AN APPLICATION

SPS 1.01	Authority and scope.
SPS 1.03	Definitions.
SPS 1.04	Examination failure: retake and hearing, consequences of cheating on an examination or breach of examination security.
SPS 1.05	Notice of intent to deny, notice of denial and notice of cheating on an examination or breach of examination security.
SPS 1.06	Parties to a denial review proceeding.
SPS 1.07	Request for hearing.
SPS 1.08	Procedure.
SPS 1.09	Conduct of hearing.
SPS 1.10	Service.
SPS 1.11	Failure to appear.
SPS 1.12	Withdrawal of request.
SPS 1.13	Transcription fees.

Note: Chapter RL 1 was renumbered chapter SPS 1 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 1.01 Authority and scope. Rules in this chapter are adopted under authority in s. 440.03 (1), Stats., for the purpose of governing review of a decision to deny an application. Rules in this chapter do not apply to denial of an application for renewal of a credential. Rules in this chapter shall apply to applications received on or after July 1, 1996.

Note: Procedures used for denial of an application for renewal of a credential are found in Ch. SPS 2, Wis. Admin. Code and s. 227.01 (3) (b), Stats.

History: Cr. Register, October, 1985, No. 358, eff. 11−1−85; am., Register, July, 1996, No. 487, eff. 8−1−96.

SPS 1.03 Definitions. In this chapter:

(1) "Applicant" means any person who applies for a credential from the applicable credentialing authority. "Person" in this subsection includes a business entity.

(1g) "Breach of examination security" means any of the following:

(a) Removing from the examination room any examination materials without authorization.

(b) Reproducing, or assisting a person in reproducing, any portion of the credentialing examination by any means and without authorization.

(c) Paying a person to take the credentialing examination to discover the content of any portion of the credentialing examination.

(d) Obtaining examination questions or other examination materials, except by specific authorization before, during, or after an examination.

(e) Using, or purporting to use, improperly obtained examination questions or materials to instruct or prepare an applicant for the credentialing examination.

(f) Selling, distributing, buying, receiving or having unauthorized possession of any portion of a future, current, or previously administered credentialing examination.

(1r) "Cheating on an examination" includes:

(a) Communicating with other persons inside or outside of the examination room concerning examination content using any means of communication while the examination is being administered.

(b) Copying the answers of another applicant, or permitting answers to be copied by another applicant.

(c) Substituting another person to write one or more of the examination answers or papers in the place of the applicant.

(d) Referring to "notes," textbooks or other unauthorized information sources inside or outside the examination room while the examination is being administered.

(e) Disclosing the nature or content of any examination question or answer to another person prior to, during, or subsequent to the conclusion of the examination.

(f) Removing or attempting to remove any examination materials, notes or facsimiles of examination content such as photo, audiovisual, or electronic records from the examination room.

(g) Violating rules of conduct of the examination.

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

(3) "Credentialing authority" means the department or an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential.

(4) "Denial review proceeding" means a class 1 proceeding as defined in s. 227.01 (3) (a), Stats., in which a credentialing authority reviews either a decision to deny a completed application for a credential or a determination of cheating on an examination or breach of examination security.

(5) "Department" means the department of safety and professional services.

(6) "Division" means the division of enforcement in the department.

(7) "Office of examinations" means the office of examinations in the department.

History: Cr. Register, October, 1985, No. 358, eff. 11−1−85; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; am. (1), (4), r. (2), renum. (3) to be (5), cr. (2), (3), (6), Register, July, 1996, No. 487, eff. 8−1−96; CR 05−050: cr. (1g), (1r) and (7), am. (4) Register January 2006 No. 601, eff. 2−1−06; **correction in (5) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.**

SPS 1.04 Examination failure: retake and hearing, consequences of cheating on an examination or breach of examination security. (1) An applicant may request a hearing to challenge the validity, scoring or administration of an examination if the applicant has exhausted other available administrative remedies, including, but not limited to, internal examination review and regrading, and if either:

(a) The applicant is no longer eligible to retake a qualifying examination.

(b) Reexamination is not available within 6 months from the date of the applicant's last examination.

(2) A failing score on an examination does not give rise to the right to a hearing if the applicant is eligible to retake the examination and reexamination is available within 6 months from the date of the applicant's last examination.

Note: An applicant is not eligible for a license until his or her application is complete. An application is not complete until an applicant has submitted proof of having successfully passed any required qualifying examination. If an applicant fails the qualifying examination, but has the right to retake it within 6 months, the applicant is not entitled to a hearing under this chapter.

(3) (a) Consequences imposed for cheating on an examination or for committing a breach of examination security shall be related to the seriousness of the offense and may include: denial of grades; entering of a failing grade on all examinations in which cheating occurred; restrictions on reexamination; or denial of licensure. If more than one applicant are involved in a connected offense of cheating on an examination or breach of examination

security, each applicant knowingly involved is subject to the consequences in this section.

(b) Restrictions on reexamination may include denying the applicant the right to retake the examination for a specified period of time or the imposition of a permanent bar on reexamination.

(c) The department may provide information on the consequences imposed upon an applicant to other jurisdictions where the applicant may apply for credentialing or examination.

(d) If an approved or credentialed school or instructor is found to have facilitated actions constituting cheating on an examination or breach of examination security, the school or instructor may be subject to disciplinary action or revocation of approval.

History: Cr., Register, July, 1996, No. 487, eff. 8−1−96; CR 05−050: cr. (3) Register January 2006 No. 601, eff. 2−1−06.

SPS 1.05 Notice of intent to deny, notice of denial and notice of cheating on an examination or breach of examination security. (1) NOTICE OF INTENT TO DENY. (a) A notice of intent to deny may be issued upon an initial determination that the applicant does not meet the eligibility requirements for a credential. A notice of intent to deny shall contain a short statement in plain language of the basis for the anticipated denial, specify the statute, rule or other standard upon which the denial will be based and state that the application shall be denied unless, within 45 calendar days from the date of the mailing of the notice, the credentialing authority receives additional information which shows that the applicant meets the requirements for a credential. The notice shall be substantially in the form shown in Appendix I.

(b) If the credentialing authority does not receive additional information within the 45 day period, the notice of intent to deny shall operate as a notice of denial and the 45 day period for requesting a hearing described in s. SPS 1.07 shall commence on the date of mailing of the notice of intent to deny.

(c) If the credentialing authority receives additional information within the 45 day period which fails to show that the applicant meets the requirements for a credential, a notice of denial shall be issued under sub. (2).

(2) NOTICE OF DENIAL. If the credentialing authority determines that an applicant does not meet the requirements for a credential, the credentialing authority shall issue a notice of denial in the form shown in Appendix II. The notice shall contain a short statement in plain language of the basis for denial, specify the statute, rule or other standard upon which the denial is based, and be substantially in the form shown in Appendix II.

(3) NOTICE OF CHEATING ON AN EXAMINATION OR BREACH OF EXAMINATION SECURITY. If after an investigation the office of examinations determines there is probable cause to believe that an applicant has cheated on an examination or breached examination security and the office of examinations and the applicant cannot agree upon a consequence acceptable to the credentialing authority, the office of examinations shall issue a notice of cheating on an examination or breach of examination security. The notice shall:

(a) Include the name and address of the applicant, the examination involved, and a statement identifying with reasonable particularity the grounds for the conclusion that the applicant has cheated on an examination or breached examination security.

(b) Be mailed to the applicant at the address provided in the materials submitted by the applicant when applying to take the examination. Notice is effective upon mailing.

History: Cr., Register, July, 1996, eff. 8−1−96; CR 05−050: cr. (3) Register January 2006 No. 601, eff. 2−1−06; **correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 1.06 Parties to a denial review proceeding. Parties to a denial review proceeding are the applicant, the credentialing authority and any person admitted to appear under s. 227.44 (2m), Stats.

History: Cr. Register, October, 1985, No. 358, eff. 11−1−85;renum. from RL 1.04 and am., Register, July, 1996, No. 487, eff. 8−1−96.

SPS 1.07 Request for hearing. An applicant may request a hearing within 45 calendar days after the mailing of a notice of denial by the credentialing authority or notice of cheating on an examination or breach of examination security by the office of examinations. The request shall be in writing and set forth all of the following:

(1) The applicant's name and address.

(2) The type of credential for which the applicant has applied.

(3) A specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential or for reversing a determination of cheating on an examination or a determination of breach of examination security. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the request shall include a statement of the law upon which the applicant relies.

History: Cr., Register, July, 1996, No. 487, eff. 8−1−96; CR 05−050: am. (intro.) and (3) Register January 2006 No. 601, eff. 2−1−06.

SPS 1.08 Procedure. The procedures for a denial review proceeding are:

(1) REVIEW OF REQUEST FOR HEARING. Within 45 calendar days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential or on a determination of cheating on an examination or a determination of breach of examination security. A request shall be granted if requirements in s. SPS 1.07 are met, and the credentialing authority or its designee shall notify the applicant of the time, place and nature of the hearing. If the requirements in s. SPS 1.07 are not met, a hearing shall be denied, and the credentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under s. 227.52, Stats., a request is denied if a response to a request for hearing is not issued within 45 calendar days of its receipt by the credentialing authority.

(2) DESIGNATION OF PRESIDING OFFICER. An administrative law judge employed by the department shall preside over denial hearings, unless the credentialing authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employee borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employee by the department, except that the administrative law judge may not be an employee in the division.

(3) DISCOVERY. Unless the parties otherwise agree, no discovery is permitted, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(4) BURDEN OF PROOF. The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential. The office of examinations has the burden of proof to show by a preponderance of the evidence that the applicant cheated on an examination or breached examination security.

History: Cr., Register, July, 1996, No. 487, eff. 8−1−96; CR 05−050: am. (1) and (4) Register January 2006 No. 601, eff. 2−1−06; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 1.09 Conduct of hearing. (1) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence, and of other oral proceedings when requested by a party.

(2) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(3) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 227.45 (6m), Stats.

(b) A presiding officer may issue protective orders according to the provisions of s. 805.07, Stats.

(4) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(5) EVIDENCE. The credentialing authority, the office of examinations and the applicant shall have the right to appear in person or by counsel, to call, examine and cross−examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credentialing authority prior to denial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

(5m) CONFIDENTIALITY OF EXAMINATION RECORDS. The presiding officer shall take appropriate precautions to preserve examination security in conjunction with the conduct of a hearing held pursuant to this section.

(6) BRIEFS. The presiding officer may require the filing of briefs.

(7) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr., Register, July, 1996, No. 487, eff. 8−1−96; CR 05−050: am. (5), cr. (5m) Register January 2006 No. 601, eff. 2−1−06.

SPS 1.10 Service. Service of any document on an applicant may be made by mail addressed to the applicant at the last address filed in writing by the applicant with the credentialing authority. Service by mail is complete on the date of mailing.

History: Cr. Register, October, 1985, No. 358, eff. 11−1−85; renum. from RL 1.06 and am., Register, July, 1996, No. 487, eff. 8−1−96.

SPS 1.11 Failure to appear. In the event that neither the applicant nor his or her representative appears at the time and place designated for the hearing, the credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal the action taken by the credentialing authority.

History: Cr. Register, October, 1985, No. 358, eff. 11−1−85; renum. from RL 1.07 and am., Register, July, 1996, No. 487, eff. 8−1−96; CR 05−050: am. Register January 2006 No. 601, eff. 2−1−06.

SPS 1.12 Withdrawal of request. A request for hearing may be withdrawn at any time. Upon receipt of a request for withdrawal, the credentialing authority shall issue an order affirming the withdrawal of a request for hearing on the denial or on the determination of cheating on an examination or determination of breach of examination security.

History: Cr., Register, July, 1996, No. 487, eff. 8−1−96; CR 05−050: am. Register January 2006 No. 601, eff. 2−1−06.

SPS 1.13 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath. For purposes of this section, a determination of indigency shall be based on the standards used for making a determination of indigency under s. 977.07, Stats.

History: Cr., Register, July, 1996, No. 487, eff. 8−1−96.

Chapter SPS 1

APPENDIX I

NOTICE OF INTENT TO DENY

[DATE]

[NAME] and

ADDRESS of APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Intent to Deny

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL]. On the basis of the application submitted, the [CREDENTIALING AUTHORITY] intends to deny your application for reasons identified below unless, within 45 calendar days from the date of the mailing of this notice, the [CREDENTIALING AUTHORITY] receives additional information which shows that you meet the requirements for a credential.

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON WHICH THE DENIAL WILL BE BASED]

If the [CREDENTIALING AUTHORITY] does not receive additional information within the 45 day period, this notice of intent to deny shall operate as a notice of denial and the 45 day period you have for requesting a hearing shall commence on the date of mailing of this notice of intent to deny.

_____

[Designated Representative of Credentialing Authority]

PLEASE NOTE that your have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. SPS 1 of the Wisconsin Administrative Code. If you do not submit additional information in support of your application, you may request a hearing within 45 calendar days after the mailing of this notice. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Safety and Professional Services

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708−8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S] decision. Under s. SPS 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued with 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter SPS 1

APPENDIX II

NOTICE OF DENIAL

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Denial

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL] and denies the application for the following reasons:

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

_____
[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. SPS 1 of the Wisconsin Administrative Code. You may request a hearing within 45 calendar days after the mailing of this notice of denial. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Safety and Professional Services
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708−8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S] decision. Under s. SPS 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued within 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

The Wisconsin Administrative Code on this web site is current through the last published Wisconsin Register. See also Are the Codes on this Website Official?

Chapter SPS 2

PROCEDURES FOR PLEADING AND HEARINGS

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SPS 2.03	Definitions.
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SPS 2.18	Assessment of costs.
SPS 2.20	Extension of time limits in disciplinary actions against physicians.

Note: Chapter RL 2 was renumbered chapter SPS 2 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 2.01 Authority. The rules in ch. SPS 2 are adopted pursuant to authority in s. 440.03 (1), Stats., and procedures in ch. 227, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. Register, May, 1982, No. 317, eff. 6−1−82; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 2.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in class 2 proceedings, as defined in s. 227.01 (3) (b), Stats., against licensees before the department and all disciplinary authorities attached to the department, except that s. SPS 2.17 applies also to class 1 proceedings, as defined in s. 227.01 (3) (a), Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. Register, May, 1982, No. 317, eff. 6−1−82; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; am. Register, June, 1992, No. 438, eff. 7−1−92; emerg. am. eff. 11−14−95; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 2.03 Definitions. In this chapter:

(1) "Complainant" means the person who signs a complaint.

(2) "Complaint" means a document which meets the requirements of ss. SPS 2.05 and 2.06.

(3) "Department" means the department of safety and professional services.

(4) "Disciplinary authority" means the department or the attached examining board or board having authority to revoke the license of the holder whose conduct is under investigation.

(5) "Disciplinary proceeding" means a proceeding against one or more licensees in which a disciplinary authority may determine to revoke or suspend a license, to reprimand a licensee, to limit a license, to impose a forfeiture, or to refuse to renew a license because of a violation of law.

(6) "Division" means the division of enforcement in the department.

(7) "Informal complaint" means any written information submitted to the division or any disciplinary authority by any person which requests that a disciplinary proceeding be commenced against a licensee or which alleges facts, which if true, warrant discipline.

(8) "Licensee" means a person, partnership, corporation or association holding any license, permit, certificate or registration granted by a disciplinary authority or having any right to renew a license, permit, certificate or registration granted by a disciplinary authority.

(9) "Respondent" means the person against whom a disciplinary proceeding has been commenced and who is named as respondent in a complaint.

(10) "Settlement conference" means a proceeding before a disciplinary authority or its designee conducted according to s. SPS 2.036, in which a conference with one or more licensee is held to attempt to reach a fair disposition of an informal complaint prior to the commencement of a disciplinary proceeding.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. (1) and (6), renum. (7) and (8) to be (8) and (9), cr. (7), Register, May, 1982, No. 317, eff. 6−1−82; r. (1), renum. (2) to (4) to be (1) to (3), cr. (4) and (10), am. (5), (7) and (8), Register, June, 1992, No. 438, eff. 7−1−92; **correction in (2), (3), (10) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.**

SPS 2.035 Receiving informal complaints. All informal complaints received shall be referred to the division for filing, screening and, if necessary, investigation. Screening shall be done by the disciplinary authority, or, if the disciplinary authority directs, by a disciplinary authority member or the division. In this section, screening is a preliminary review of complaints to determine whether an investigation is necessary. Considerations in screening include, but are not limited to:

(1) Whether the person complained against is licensed;

(2) Whether the violation alleged is a fee dispute;

(3) Whether the matter alleged, if taken as a whole, is trivial; and

(4) Whether the matter alleged is a violation of any statute, rule or standard of practice.

History: Cr. Register, May, 1982, No. 317, eff. 6−1−82; am. (intro.) and (3), Register, June, 1992, No. 438, eff. 7−1−92.

SPS 2.036 Procedure for settlement conferences. At the discretion of the disciplinary authority, a settlement conference may be held prior to the commencement of a disciplinary proceeding, pursuant to the following procedures:

(1) SELECTION OF INFORMAL COMPLAINTS. The disciplinary authority or its designee may determine that a settlement conference is appropriate during an investigation of an informal complaint if the information gathered during the investigation presents reasonable grounds to believe that a violation of the laws enforced by the disciplinary authority has occurred. Considerations in making the determination may include, but are not limited to:

(a) Whether the issues arising out of the investigation of the informal complaint are clear, discrete and sufficiently limited to allow for resolution in the informal setting of a settlement conference; and

(b) Whether the facts of the informal complaint are undisputed or clearly ascertainable from the documents received during investigation by the division.

(2) PROCEDURES. When the disciplinary authority or its designee has selected an informal complaint for a possible settlement conference, the licensee shall be contacted by the division to determine whether the licensee desires to participate in a settlement conference. A notice of settlement conference and a description of settlement conference procedures, prepared on forms prescribed by the department, shall be sent to all participants in

advance of any settlement conference. A settlement conference shall not be held without the consent of the licensee. No agreement reached between the licensee and the disciplinary authority or its designee at a settlement conference which imposes discipline upon the licensee shall be binding until the agreement is reduced to writing, signed by the licensee, and accepted by the disciplinary authority.

(3) ORAL STATEMENTS AT SETTLEMENT CONFERENCE. Oral statements made during a settlement conference shall not be introduced into or made part of the record in a disciplinary proceeding.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92.

SPS 2.037 Parties to a disciplinary proceeding. Parties to a disciplinary proceeding are the respondent, the division and the disciplinary authority before which the disciplinary proceeding is heard.

History: Cr. Register, May, 1982, No. 317, eff. 6−1−82; renum. from RL 2.036 and am., Register, June, 1992, No. 438, eff. 7−1−92.

SPS 2.04 Commencement of disciplinary proceedings. Disciplinary proceedings are commenced when a notice of hearing is filed in the disciplinary authority office or with a designated administrative law judge.

History: Cr. Register, February, 1979, No. 278, eff. 3−1−79; am. Register, June, 1992, No. 438, eff. 7−1−92.

SPS 2.05 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in disciplinary proceedings shall be captioned: "BEFORE THE _____" and shall be entitled: "IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST _____, RESPONDENT."

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78.

SPS 2.06 Complaint. A complaint may be made on information and belief and shall contain:

(1) The name and address of the licensee complained against and the name and address of the complainant;

(2) A short statement in plain language of the cause for disciplinary action identifying with reasonable particularity the transaction, occurrence or event out of which the cause arises and specifying the statute, rule or other standard alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the complainant demands that the disciplinary authority hear evidence relevant to matters alleged in this complaint, determine and impose the discipline warranted, and assess the costs of the proceeding against the respondent;" and,

(4) The signature of the complainant.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. (intro.), (3) and (4), Register, June, 1992, No. 438, eff. 7−1−92.

SPS 2.07 Notice of hearing. (1) A notice of hearing shall be sent to the respondent at least 10 days prior to the hearing, unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be substantially in the form shown in Appendix 1 and signed by a disciplinary authority member or an attorney in the division.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. (2) (intro.), Register, February, 1979, No. 278, eff. 3−1−79; r. and recr. Register, June, 1992, No. 438, eff. 7−1−92.

SPS 2.08 Service and filing of complaint, notice of hearing and other papers. (1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with a disciplinary authority may be mailed to the disciplinary authority office or, if an administrative law judge has been designated to preside in the matter, to the administrative law judge and shall be deemed filed on receipt at the disciplinary authority office or by the administrative law judge. An answer under s. SPS 2.09, and motions under s. SPS 2.15 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the disciplinary authority. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the disciplinary authority.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. (2), Register, June, 1992, No. 438, eff. 7−1−92; **correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 2.09 Answer. (1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. (4), Register, February, 1979, No. 278, eff. 3−1−79; am. (1), (3) and (4), Register, June, 1992, No. 438, eff. 7−1−92.

SPS 2.10 Administrative law judge. (1) DESIGNATION. Disciplinary hearings shall be presided over by an administrative law judge employed by the department unless the disciplinary authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employee borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employee by the department, except that the administrative law judge may not be an employee in the division.

(2) AUTHORITY. An administrative law judge designated under this section to preside over any disciplinary proceeding has the authority described in s. 227.46 (1), Stats. Unless otherwise directed by a disciplinary authority pursuant to s. 227.46 (3), Stats., an administrative law judge presiding over a disciplinary proceeding shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. Unless otherwise directed by a disciplinary authority, the proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the disciplinary authority objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; r. and recr. (1), Register, November, 1986, No. 371, eff. 12−1−86; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; am. Register, June, 1992, No. 438, eff. 7−1−92.

SPS 2.11 Prehearing conference. In any matter pending before the disciplinary authority the complainant and the respondent, or their attorneys, may be directed by the disciplinary

authority or administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplification of issues, the necessity or desirability of amendments to the pleadings, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. Register, June, 1992, No. 438, eff. 1992.

SPS 2.12 Settlements. No stipulation or settlement agreement disposing of a complaint or informal complaint shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the disciplinary authority.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. Register, June, 1992, No. 438, eff. 7−1−92.

SPS 2.13 Discovery. The person prosecuting the complaint and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats., or other remedies as are appropriate for failure to comply with such orders may be made by the presiding officer.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78.

SPS 2.14 Default. If the respondent fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. Register, June, 1992, No. 438, eff. 7−1−92; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 2.15 Conduct of hearing. (1) PRESIDING OFFICER. The hearing shall be presided over by a member of the disciplinary authority or an administrative law judge designated pursuant to s. SPS 2.10.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The complainant and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross−examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The presiding officer may require the filing of briefs.

(5) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(6) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) A presiding officer may issue protective orders according to the provision the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department of safety and professional services in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. (1), (5) and (6), cr. (8), Register, June, 1992, No. 438, eff. 7−1−92; **correction in (1), (8) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.**

SPS 2.16 Witness fees and costs. Witnesses subpoenaed at the request of the division or the disciplinary authority shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. Register, June, 1992, No. 438, eff. 7−1−92.

SPS 2.17 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. (1) Register, May, 1982, No. 317, eff. 6−1−82; r. and recr. Register, June, 1992, No. 438, eff. 7−1−92; am. (1) (b), Register, August, 1993, No. 452, eff. 9−1−93.

SPS 2.18 Assessment of costs. (1) The proposed decision of an administrative law judge following hearing shall include a recommendation whether all or part of the costs of the proceeding shall be assessed against the respondent.

(2) If a respondent objects to the recommendation of an administrative law judge that costs be assessed, objections to the assessment of costs shall be filed, along with any other objections to the proposed decision, within the time established for filing of objections.

(3) The disciplinary authority's final decision and order imposing discipline in a disciplinary proceeding shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent.

(4) When costs are imposed, the division and the administrative law judge shall file supporting affidavits showing costs incurred within 15 days of the date of the final decision and order. The respondent shall file any objection to the affidavits within 30 days of the date of the final decision and order. The disciplinary authority shall review any objections, along with the affidavits, and affirm or modify its order without a hearing.

History: Cr. Register, June, 1992, No. 438, eff. 7−1−92.

SPS 2.20 Extension of time limits in disciplinary actions against physicians. (1) AUTHORITY AND PURPOSE. The rules in this section are adopted under the authority of ss. 15.08 (5) (b), 227.11 (2) and 448.02 (3) (cm), Stats., to govern the extension of time limits in disciplinary actions against physicians.

(2) COMPUTING TIME LIMITS. In computing time limits under s. 448.02 (3) (cm), Stats., the date of initiating an investigation shall be the date of the decision to commence an investigation of an informal complaint following the screening of the informal complaint under s. SPS 2.035, except that if the decision to commence an investigation of an informal complaint is made more

than 45 days after the date of receipt of the informal complaint in the division, or if no screening of the informal complaint is conducted, the time for initiating an investigation shall commence 45 days after the date of receipt of the informal complaint in the division. The date that the medical examining board initiates a disciplinary action shall be the date that a disciplinary proceeding is commenced under s. SPS 2.04.

(3) PROCEDURE FOR REQUESTING AN EXTENSION OF TIME. The medical examining board or the division on behalf of the medical examining board shall make a written request for an extension of time under s. 448.02 (3) (cm), Stats., to the secretary of the department of safety and professional services and shall state all of the following:

(a) The nature of the investigation and the date of initiating the investigation.

(b) The number of days the medical examining board requires as an extension in order to determine whether a physician is guilty of unprofessional conduct or negligence in treatment and to initiate disciplinary action.

(c) The reasons why the medical examining board has not made a decision within the time specified under s. 448.02 (3) (cm), Stats.

(4) FACTORS TO BE CONSIDERED. In deciding whether to grant or deny a specified extension of time for the medical examining board to determine whether a physician is guilty of unprofessional conduct or negligence in treatment, the secretary of the department of safety and professional services shall consider the information set forth in the request and at least the following factors:

(a) The nature and complexity of the investigation including the cause of any delays encountered during the investigation.

(b) Whether delays encountered during the screening of the complaint or the complaint handling process were caused in whole or part by the fact that record custodians, witnesses, or persons investigated did not make a timely response to requests for records or other evidence.

(c) Whether civil or criminal litigation relating to the matter investigated caused any delay in the investigation.

(d) The quality and complexity of evidence available to the medical examining board.

(e) The extent to which the physician will be prejudiced by an extension of time.

(f) The potential harm to the public if the investigation is terminated without a determination of whether the physician complained about is guilty of unprofessional conduct or negligence in treatment.

(5) APPROVE OR DENY AN EXTENSION. The secretary of the department of safety and professional services shall approve or deny a request for an extension within 20 days of receipt. A request not approved within 20 days shall be deemed denied.

History: CR 02−103: cr. Register March 2004 No. 579, eff. 4−1−04; **correction in (2), (3) (intro.), (4) (intro.), (5) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.**

Chapter SPS 2

APPENDIX I

NOTICE OF HEARING

THE STATE OF WISCONSIN

To each person named above as a respondent:

You are hereby notified that disciplinary proceedings have been commenced against you before the (#1). The Complaint, which is attached to this Notice, states the nature and basis of the proceeding. This proceeding may result in disciplinary action taken against you by the (#2). This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Wis. Stats.

Within 20 days from the date of service of the complaint, you must respond with a written Answer to the allegations of the Complaint. You may have an attorney help or represent you. The Answer shall follow the general rules of pleading contained in s. SPS 2.09. If you do not provide a proper Answer within 20 days, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#3) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

The original of your Answer should be filed with the Administrative Law Judge who has been designated to preside over this matter pursuant to s. SPS 2.10, who is:

(#4)
Administrative Law Judge
Division of Hearings and Appeals
5005 University Avenue, Suite 201
P. O. Box 7875
Madison, Wisconsin 53705−5400

You should also file a copy of your Answer with the complainant's attorney, who is:

(#5)
Department of Safety and Professional Services
Division of Enforcement
P. O. Box 8935
Madison, Wisconsin 53708

A hearing on the matters contained in the Complaint will be held at the time and location indicated below:

Hearing Date, Time and Location

Date: **(#6)**

Time: **(#7)**

Location: **Room (#8)**
1400 East Washington Avenue
Madison, Wisconsin

or as soon thereafter as the matter may be heard. The questions to be determined at this hearing are whether the license previously issued to you should be revoked or suspended, whether such license should be limited, whether you should be reprimanded, whether, if authorized by law, a forfeiture should be imposed, or whether any other discipline should be imposed on you. You may be represented by an attorney at the hearing. The legal authority and procedures under which the hearing is to be held is set forth in s. 227.44, Stats., s. (#9), Stats., ch. SPS 2, and s. (#10).

If you do not appear for hearing at the time and location set forth above, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#11) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the disciplinary authority and the Administrative Law Judge within 20 days of your receiving this Notice.

Dated at Madison, Wisconsin this _____day of_____, 2_____.

_____
Signature of Licensing Authority Member or Attorney

(#12)

INSERTIONS

1. Disciplinary authority
2. Disciplinary authority
3. Disciplinary authority
4. Administrative Law Judge
5. Complainant's attorney
6. Date of hearing
7. Time of hearing
8. Location of hearing
9. Legal authority (statute)
10. Legal authority (administrative code)
11. Disciplinary authority
12. Address and telephone number of person signing the complaint

Chapter SPS 3

ADMINISTRATIVE INJUNCTIONS

SPS 3.01	Authority.
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SPS 3.09	Administrative law judge.
SPS 3.10	Prehearing conference.
SPS 3.11	Settlements.
SPS 3.12	Discovery.
SPS 3.13	Default.
SPS 3.14	Conduct of hearing.
SPS 3.15	Witness fees and costs.
SPS 3.16	Transcription fees.

Note: Chapter RL 3 was renumbered chapter SPS 3 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 3.01 Authority. The rules in ch. SPS 3 are adopted pursuant to authority in ss. 440.03 (1) and 440.21, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 3.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in public hearings before the department to determine and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and for issuance of an administrative injunction.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93.

SPS 3.03 Definitions. In this chapter:

(1) "Administrative injunction" means a special order enjoining a person from the continuation of a practice or use of a title without a credential required under chs. 440 to 459, Stats.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 459, Stats.

(3) "Department" means the department of safety and professional services.

(4) "Division" means the division of enforcement in the department.

(5) "Petition" means a document which meets the requirements of s. SPS 3.05.

(6) "Respondent" means the person against whom an administrative injunction proceeding has been commenced and who is named as respondent in a petition.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93; **correction in (3), (5) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.**

SPS 3.04 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in an administrative injunction proceeding shall be captioned: "BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES" and shall be entitled: "IN THE MATTER OF A PETITION FOR AN ADMINISTRATIVE INJUNCTION INVOLVING _____, RESPONDENT."

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93; **correction made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.**

SPS 3.05 Petition for administrative injunction. A petition for an administrative injunction shall allege that a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats. A petition may be made on information and belief and shall contain:

(1) The name and address of the respondent and the name and address of the attorney in the division who is prosecuting the petition for the division;

(2) A short statement in plain language of the basis for the division's belief that the respondent has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and specifying the statute or rule alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the division demands that a public hearing be held and that the department issue a special order enjoining the person from the continuation of the practice or use of the title;" and,

(4) The signature of an attorney authorized by the division to sign the petition.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93.

SPS 3.06 Notice of hearing. (1) A notice of hearing shall be sent to the respondent by the division at least 10 days prior to the hearing, except in the case of an emergency in which shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be essentially in the form shown in Appendix I and signed by an attorney in the division.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93.

SPS 3.07 Service and filing of petition, notice of hearing and other papers. (1) The petition, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with the department may be mailed to the administrative law judge designated to preside in the matter and shall be deemed filed on receipt by the administrative law judge. An answer under s. SPS 3.08, and motions under s. SPS 3.14 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the department. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the department.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93; **correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 3.08 Answer. (1) An answer to a petition shall state in short and plain terms the defenses to each allegation asserted and shall admit or deny the allegations upon which the division relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or to provide a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a petition are admitted when not denied in the answer.

(4) An answer to a petition shall be filed within 20 days from the date of service of the petition.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93.

SPS 3.09 Administrative law judge. (1) DESIGNATION. Administrative injunction proceedings shall be presided over by an administrative law judge. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employee borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employee by the department. The administrative law judge may not be an employee in the division.

(2) AUTHORITY. An administrative law judge designated under this section has the authority described in s. 227.46 (1), Stats. Unless otherwise directed under s. 227.46 (3), Stats., an administrative law judge shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted by the department as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. The proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the department objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93.

SPS 3.10 Prehearing conference. In any matter pending before the department, the division and the respondent may be directed by the administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplification of issues, the necessity or desirability of amendments to the pleading, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93.

SPS 3.11 Settlements. No stipulation or settlement agreement disposing of a petition or informal petition shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the department.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93.

SPS 3.12 Discovery. The division and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats., or other remedies as are appropriate for failure to comply with such orders may be made by the administrative law judge.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93.

SPS 3.13 Default. If the respondent fails to answer as required by s. SPS 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence. The department may, for good cause, relieve the respondent from the effect of the findings and permit the respondent to answer and defend at any time before the department enters an order or within a reasonable time thereafter.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 3.14 Conduct of hearing. (1) ADMINISTRATIVE LAW JUDGE. The hearing shall be presided over by an administrative law judge designated pursuant to s. SPS 3.09.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The division and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross−examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The administrative law judge may require the filing of briefs.

(5) MOTIONS. (a) *How made.* An application to the administrative law judge for an order shall be by motion which, unless made during a hearing or prehearing conference, shall be in writing, state with particularity the grounds for the order, and set forth the relief or order sought.

(b) *Filing.* A motion shall be filed with the administrative law judge and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(c) *Supporting papers.* Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion.

(6) ADJOURNMENTS. The administrative law judge may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) An administrative law judge may issue protective orders according to the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the administrative law judge determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 3.15 Witness fees and costs. Witnesses subpoenaed at the request of the division shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93.

SPS 3.16 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

Note: The State Operational Purchasing Bulletin may be obtained from the Department of Administration, State Bureau of Procurement, 101 E. Wilson Street, 6th Floor, P.O. Box 7867, Madison, Wisconsin 53707−7867.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of an affidavit showing that the person is indigent according to the standards adopted in rules of the state public defender under ch. 977, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93.

Chapter SPS 3

APPENDIX I

STATE OF WISCONSIN BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES		
IN THE MATTER OF A PETITION FOR AN ADMINISTRATIVE INJUNCTION INVOLVING	:	NOTICE OF HEARING
(#1),	:	
Respondent.	:	

NOTICE OF HEARING

TO: (#2)

You are hereby notified that a proceeding for an administrative injunction has been commenced against you by the Department of Safety and Professional Services. The petition attached to this Notice states the nature and basis of the proceeding. This proceeding may result in a special order against you under s. 440.21, Stats., enjoining you from the continuation of a practice or use of a title.

A HEARING ON THE MATTERS CONTAINED IN THE PETITION WILL BE HELD AT:

Date: (#3) **Time: (#4)**

Location: Room (#5),
1400 East Washington Avenue
Madison, Wisconsin
or as soon thereafter as the matter may be heard.

The questions to be determined at this hearing are whether (#6).

Within 20 days from the date of service of the Notice, you must respond with a written Answer to the allegations of the Petition. You may have an attorney help or represent you. Your Answer must follow the rules of pleading in s. SPS 3.08 of the Wisconsin Administrative Code. File your Answer with the Administrative Law Judge for this matter who is:

(#7), Administrative Law Judge,
Division of Hearings and Appeals, 5005 University Avenue, Suite 201, P.O. Box 7875
Madison, Wisconsin 53705−5400

Please file a copy of your answer with the division's attorney, who is:

(#8), Division of Enforcement,
Department of Safety and Professional Services,
P.O. Box 8935, Madison, Wisconsin 53708

If you do not provide a proper Answer within 20 days or do not appear for the hearing, you will be found to be in default and a special order may be entered against you enjoining you from the continuation of a practice or use of a title. If a special order is issued as a result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than $10,000 for each offense.

You may be represented by an attorney at the hearing. This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Stats. If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the Administrative Law Judge and the division within 20 days after you receive this Notice.

The legal authority and procedures under which the hearing is to be held are set forth in ss. 227.21, 440.44, (#9), Stats., and ch. SPS 3, Wis. Admin. Code.

Dated at Madison, Wisconsin this _____day of _____, 2_____.

_____
(...#10...), Attorney

INSERTIONS

1. Respondent
2. Respondent with address
3. Date of hearing
4. Time of hearing
5. Place of hearing
6. Issues for hearing
7. Administrative Law Judge
8. Division of Enforcement attorney
9. Legal authority (statute)
10. Division of Enforcement attorney

Chapter SPS 4

DEPARTMENT APPLICATION PROCEDURES AND APPLICATION FEE POLICIES

SPS 4.01	Authorization.
SPS 4.02	Definitions.
SPS 4.03	Time for review and determination of credential applications.
SPS 4.04	Fees for examinations, reexaminations and proctoring examinations.
SPS 4.05	Fee for test review.
SPS 4.06	Refunds.
SPS 4.07	Investigation.
SPS 4.08	Photographs and fingerprints.
SPS 4.09	Credential holder charges or convictions.

Note: Chapter RL 4 was renumbered chapter SPS 4 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 4.01 Authorization. The following rules are adopted by the department of safety and professional services pursuant to ss. 440.05, 440.06 and 440.07, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. Register, July, 1996, No. 487, eff. 8−1−96; correction made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.

SPS 4.02 Definitions. (1) "Applicant" means a person who applies for a license, permit, certificate or registration granted by the department or a board.

(1g) "Arrest record" means information indicating that an individual has been apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

(2) "Authority" means the department or the attached examining board or board having authority to grant the credential for which an application has been filed.

(3) "Board" means the board of nursing and any examining board attached to the department.

(3e) "Conviction record" means information indicating that an individual has been convicted of any felony, misdemeanor or other offense, has been adjudicated delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned, placed on extended supervision or paroled pursuant to any law enforcement or military authority.

(3m) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(3s) "Credentialing authority" means the department or an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential.

(4) "Department" means the department of safety and professional services.

(5) "Examination" means the written and practical tests required of an applicant by the authority.

(5m) "Investigate" means to determine the arrest and conviction record of an applicant or holder of a credential, including but not limited to:

(a) Determining whether an applicant or holder of a credential has been charged with or convicted of a crime.

(b) Determining the facts and circumstances surrounding an arrest, criminal charge, or conviction.

(c) Determining the outcome and status of an arrest, criminal charges or conviction record, including completion of sentence imposed, probationary terms or parole.

(d) Requiring disclosure of arrest or conviction record by an applicant.

(6) "Service provider" means a party other than the department or board who provides examination services such as application processing, examination products or administration of examinations.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; renum. (1) to (4) to be (4), (3), (1), (5) and am. (5), cr. (2) and (6), Register, July, 1996, No. 487, eff. 8−1−96; CR 04−097: cr. (1g), (3e), (3m), (3s) and (5m) Register May 2005 No. 593, eff. 6−1−05; correction in (4) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.

SPS 4.03 Time for review and determination of credential applications. (1) TIME LIMITS. An authority shall review and make a determination on an original application for a credential within 60 business days after a completed application is received by the authority unless a different period for review and determination is specified by law.

(2) COMPLETED APPLICATIONS. An application is completed when all materials necessary to make a determination on the application and all materials requested by the authority have been received by the authority.

(3) EFFECT OF DELAY. A delay by an authority in making a determination on an application within the time period specified in this section shall be reported to the permit information center under s. 227.116, Stats. Delay by an authority in making a determination on an application within the time period specified in this section does not relieve any person from the obligation to secure approval from the authority nor affect in any way the authority's responsibility to interpret requirements for approval and to grant or deny approval.

History: Cr. Register, August, 1992, No. 440, eff. 9−1−92; renum. from RL 4.06 and am., Register, July, 1996, No. 487, eff. 8−1−96.

SPS 4.04 Fees for examinations, reexaminations and proctoring examinations. (1) EXAMINATION FEE SCHEDULE. A list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(3) EXPLANATION OF PROCEDURES FOR SETTING EXAMINATION FEES. (a) Fees for examinations shall be established under s. 440.05 (1) (b), Stats., at the department's best estimate of the actual cost of preparing, administering and grading the examination or obtaining and administering an approved examination from a service provider.

(b) Examinations shall be obtained from a service provider through competitive procurement procedures described in ch. Adm 7.

(c) Fees for examination services provided by the department shall be established based on an estimate of the actual cost of the examination services. Computation of fees for examination services provided by the department shall include standard component amounts for contract administration services, test development services and written and practical test administration services.

(d) Examination fees shall be changed as needed to reflect changes in the actual costs to the department. Changes to fees shall be implemented according to par. (e).

(e) Examination fees shall be effective for examinations held 45 days or more after the date of publication of a notice in application forms. Applicants who have submitted fees in an amount less than that in the most current application form shall pay the correct amount prior to administration of the examination. Overpayments shall be refunded by the department. Initial credential fees shall become effective on the date specified by law.

(4) REEXAMINATION OF PREVIOUSLY LICENSED INDIVIDUALS. Fees for examinations ordered as part of a disciplinary proceeding or late renewal under s. 440.08 (3) (b), Stats., are equal to the fee set for reexamination in the most recent examination application form, plus $10 application processing.

(5) PROCTORING EXAMINATIONS FOR OTHER STATES. (a) Examinations administered by an authority of the state may be proctored for persons applying for credentials in another state if the person has been determined eligible in the other state and meets this state's application deadlines. Examinations not administered by an authority of the state may only be proctored for Wisconsin residents or licensees applying for credentials in another state.

(b) Department fees for proctoring examinations of persons who are applying for a credential in another state are equal to the cost of administering the examination to those persons, plus any additional cost charged to the department by the service provider.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; r. and recr. Register, May, 1986, No. 365, eff. 6−1−86; am. Register, December, 1986, No. 372, eff. 1−1−87; am. Register, September, 1987, No. 381, eff. 10−1−87; am. (3), Register, September, 1988, No. 393, eff. 10−1−88; am. (3), Register, September, 1990, No. 417, eff. 10−1−90; r. and recr. (1) to (3), cr. (4), renum. Figure and am. Register, April, 1992, No. 436, eff. 5−1−92; am. (4) Figure, cr. (5), Register, July, 1993, No. 451, eff. 8−1−93; r. and recr. Register, November, 1993, No. 455, eff. 12−1−93; r. (2), am. (3) (a), (b), (c), (e), (4), (5), Register, July, 1996, No. 487, eff. 8−1−96; correction in (1) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.

SPS 4.05 Fee for test review. (1) The fee for supervised review of examination results by a failing applicant which is conducted by the department is $28.

(2) The fee for review of examination results by a service provider is the fee established by the service provider.

History: Cr. Register, April, 1992, No. 436, eff. 5−1−92; am. Register, July, 1996, No. 487, eff. 8−1−96.

SPS 4.06 Refunds. (1) A refund of all but $10 of the applicant's examination fee and initial credential fee submitted to the department shall be granted if any of the following occurs:

(a) An applicant is found to be unqualified for an examination administered by the authority.

(b) An applicant is found to be unqualified for a credential for which no examination is required.

(c) An applicant withdraws an application by written notice to the authority at least 10 days in advance of any scheduled examination.

(d) An applicant who fails to take an examination administered by the authority either provides written notice at least 10 days in advance of the examination date that the applicant is unable to take the examination, or if written notice was not provided, submits a written explanation satisfactory to the authority that the applicant's failure to take the examination resulted from extreme personal hardship.

(2) An applicant eligible for a refund may forfeit the refund and choose instead to take an examination administered by the authority within 18 months of the originally scheduled examination at no added fee.

(3) An applicant who misses an examination as a result of being called to active military duty shall receive a full refund. The applicant requesting the refund shall supply a copy of the call up orders or a letter from the commanding officer attesting to the call up.

(4) Applicants who pay fees to service providers other than the department are subject to the refund policy established by the service provider.

History: Cr. Register, October, 1978, No. 274, eff. 11−1−78; am. (2) (intro.), Register, May, 1986, No. 365, eff. 6−1−86; am. (1) and (2) (intro.), renum. (2) (c) and (3) to be (3) and (4), cr. (5), Register, September, 1987, No. 381, eff. 10−1−87; r. and recr. (1) and (4), Register, April, 1992, No. 436, eff. 5−1−92; r. (2), renum. (3) to (5) to be (2) to (4), Register, July, 1993, No. 451, eff. 8−1−93; renum. from RL 4.03 and am., Register, July, 1996, No. 487, eff. 8−1−96.

SPS 4.07 Investigation. The department shall investigate whether an applicant for any of the following credentials has been charged with or convicted of a crime:

(1) Accountant, certified public.
(2) Acupuncturist.
(3) Advanced practice nurse prescriber.
(4) Aesthetician.
(5) Aesthetics instructor.
(6) Appraiser, real estate, certified general.
(7) Appraiser, real estate, certified residential.
(8) Appraiser, real estate, licensed.
(9) Architect.
(10) Athlete agent.
(11) Athletic trainer.
(12) Auctioneer.
(13) Audiologist.
(14) Barber or cosmetologist.
(15) Barbering or cosmetology instructor.
(16) Barbering or cosmetology manager.
(17) Boxer.
(18) Cemetery preneed seller.
(19) Cemetery salesperson.
(20) Chiropractor.
(21) Dental hygienist.
(22) Dentist.
(23) Designer of engineering systems.
(24) Dietitian.
(25) Drug distributor.
(26) Drug manufacturer.
(27) Electrologist.
(28) Electrology instructor.
(29) Engineer, professional.
(30) Fund−raising counsel.
(31) Funeral director.
(32) Hearing instrument specialist.
(33) Home inspector.
(34) Landscape architect.
(35) Land surveyor.
(36) Manicuring instructor.
(37) Manicurist.
(38) Marriage and family therapist.
(39) Massage therapist or bodyworker.
(40) Music, art or dance therapist.
(41) Nurse, licensed practical.
(42) Nurse, registered.
(43) Nurse−midwife.
(44) Nursing home administrator.
(45) Occupational therapist.
(46) Occupational therapy assistant.
(47) Optometrist.
(48) Perfusionist.
(49) Pharmacist.

(50) Physical therapist.
(51) Physical therapist assistant.
(52) Physician.
(53) Physician assistant.
(54) Podiatrist.
(55) Private detective.
(56) Private practice school psychologist.
(57) Private security person.
(58) Professional counselor.
(59) Professional fund−raiser.
(60) Professional geologist.
(61) Professional hydrologist.
(62) Professional soil scientist.
(63) Psychologist.
(64) Real estate broker.
(65) Real estate salesperson.
(66) Registered interior designer.
(66m) Registered sanitarian.
(67) Respiratory care practitioner.
(68) Social worker.
(69) Social worker, advanced practice.
(70) Social worker, independent.
(71) Social worker, independent clinical.
(72) Speech−language pathologist.
(73) Time−share salesperson.
(74) Veterinarian.
(75) Veterinary technician.

History: CR 04−097: cr. Register May 2005 No. 593, eff. 6−1−05; CR 06−125: cr. (66m) Register July 2007 No. 619, eff. 8−1−07.

SPS 4.08 Photographs and fingerprints. (1) The department may require an applicant for any of the credentials set forth in s. SPS 4.07 and not listed in sub. (2) to be photographed and fingerprinted as a part of the credentialing process, if there exits reason to believe that the applicant has failed to accurately describe his or her conviction record. The department may refer photographs and fingerprints so obtained to the department of justice for internal analysis or submission to the federal bureau of investigation for the purpose of verifying the identity of the applicant fingerprinted and obtaining records of his or her criminal arrests and convictions.

(2) The department shall require an applicant for a physician license under s. 448.02 to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the applicant's fingerprints. The department of justice may submit the fingerprint cards to the federal bureau of investigation for the purpose of verifying the identity of the applicant fingerprinted and obtaining records of his or her criminal arrests and convictions. The department shall charge the applicant any fees, costs, or other expenses incurred in conducting any investigation under this rule.

History: CR 04−097: cr. Register May 2005 No. 593, eff. 6−1−05; correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; **CR 11−027: renum 4.08 to be 4.08 (1) and am., cr. (2) Register January 2012 No. 673, eff. 2−1−12.**

SPS 4.09 Credential holder charges or convictions. (1) Pursuant to the procedures set forth in ch. SPS 2 for the screening of informal complaints, the department may investigate whether a holder of any of the credentials set forth in s. SPS 4.07 has been arrested, charged with or convicted of a crime for the purposes of determining whether the circumstances of the arrest, charge or conviction substantially relate to the circumstances of the credentialed activity.

(2) A holder of any of the credentials set forth in s. SPS 4.07 who is convicted of a felony or misdemeanor in this state or elsewhere shall notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction. Notice shall be made by mail and shall be proven by showing proof of the date of mailing the notice. Notice shall include a copy of the judgment of conviction and a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction in order that the department may determine whether the circumstances of the crime of which the credential holder was convicted are substantially related to the practice of the credential holder.

(3) As a part of an investigation the department may require a holder of any of the credentials set forth in s. SPS 4.07 to be photographed and fingerprinted, if the credential holder's arrest or conviction record is relevant to the investigation and a search based solely upon the credential holder's name is unlikely to provide complete and accurate information. The department may refer photographs and fingerprints so obtained to the department of justice for internal analysis or submission of the fingerprint cards to the federal bureau of investigation for the purpose of verifying the identity of the persons fingerprinted and obtaining records of their criminal arrests and convictions.

History: CR 04−097: cr. Register May 2005 No. 593, eff. 6−1−05; correction in (1), (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

Chapter SPS 6

SUMMARY SUSPENSIONS

SPS 6.01	Authority and intent.
SPS 6.02	Scope.
SPS 6.03	Definitions.
SPS 6.04	Petition for summary suspension.
SPS 6.05	Notice of petition to respondent.
SPS 6.06	Issuance of summary suspension order.
SPS 6.07	Contents of summary suspension order.
SPS 6.08	Service of summary suspension order.
SPS 6.09	Hearing to show cause.
SPS 6.10	Commencement of disciplinary proceeding.
SPS 6.11	Delegation.

Note: Chapter RL 6 was renumbered chapter SPS 6 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 6.01 Authority and intent. (1) This chapter is adopted pursuant to authority in ss. 227.11 (2) (a) and 440.03 (1), Stats., and interprets s. 227.51 (3), Stats.

(2) The intent of the department in creating this chapter is to specify uniform procedures for summary suspension of licenses, permits, certificates or registrations issued by the department or any board attached to the department in circumstances where the public health, safety or welfare imperatively requires emergency action.

History: Cr. Register, May, 1988, No. 389, eff. 6−1−88.

SPS 6.02 Scope. This chapter governs procedures in all summary suspension proceedings against licensees before the department or any board attached to the department. To the extent that this chapter is not in conflict with s. 448.02 (4), Stats., the chapter shall also apply in proceedings brought under that section.

History: Cr. Register, May, 1988, No. 389, eff. 6−1−88.

SPS 6.03 Definitions. In this chapter:

(1) "Board" means the bingo control board, real estate board or any examining board attached to the department.

(2) "Department" means the department of safety and professional services.

(3) "Disciplinary proceeding" means a proceeding against one or more licensees in which a licensing authority may determine to revoke or suspend a license, to reprimand a licensee, or to limit a license.

(4) "License" means any license, permit, certificate, or registration granted by a board or the department or a right to renew a license, permit, certificate or registration granted by a board or the department.

(5) "Licensee" means a person, partnership, corporation or association holding any license.

(6) "Licensing authority" means the bingo control board, real estate board or any examining board attached to the department, the department for licenses granted by the department, or one acting under a board's or the department's delegation under s. SPS 6.11.

(7) "Petitioner" means the division of enforcement in the department.

(8) "Respondent" means a licensee who is named as respondent in a petition for summary suspension.

History: Cr. Register, May, 1988, No. 389, eff. 6−1−88; **correction in (2), (6) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.**

SPS 6.04 Petition for summary suspension. (1) A petition for a summary suspension shall state the name and position of the person representing the petitioner, the address of the petitioner, the name and licensure status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

(2) A petition for a summary suspension order shall be signed upon oath by the person representing the petitioner and may be made on information and belief.

(3) The petition shall be presented to the appropriate licensing authority.

History: Cr. Register, May, 1988, No. 389, eff. 6−1−88.

SPS 6.05 Notice of petition to respondent. Prior to the presenting of the petition, the petitioner shall give notice to the respondent or respondent's attorney of the time and place when the petition will be presented to the licensing authority. Notice may be given by mailing a copy of the petition and notice to the last−known address of the respondent as indicated in the records of the licensing authority as provided in s. 440.11 (2), Stats., as created by 1987 Wis. Act 27. Notice by mail is complete upon mailing. Notice may also be given by any procedure described in s. 801.11, Stats.

History: Cr. Register, May, 1988, No. 389, eff. 6−1−88.

SPS 6.06 Issuance of summary suspension order. (1) If the licensing authority finds that notice has been given under s. SPS 6.05 and finds probable cause to believe that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license, the licensing authority may issue an order for summary suspension. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under s. SPS 2.04.

(2) The petitioner may establish probable cause under sub. (1) by affidavit or other evidence.

(3) The summary suspension order shall be effective upon service under s. SPS 6.08, or upon actual notice of the summary suspension order to the respondent or respondent's attorney, whichever is sooner, and continue through the effective date of the final decision and order made in the disciplinary proceeding against the respondent, unless the license is restored under s. SPS 6.09 prior to a formal disciplinary hearing.

History: Cr. Register, May, 1988, No. 389, eff. 6−1−88; **correction in (1), (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 6.07 Contents of summary suspension order. The summary suspension order shall include the following:

(1) A statement that the suspension order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent, unless otherwise ordered by the licensing authority;

(2) Notification of the respondent's right to request a hearing to show cause why the summary suspension order should not be continued;

(3) The name and address of the licensing authority with whom a request for hearing should be filed;

(4) Notification that the hearing to show cause shall be scheduled for hearing on a date within 20 days of receipt by the licensing authority of respondent's request for hearing, unless a later time is requested by or agreed to by the respondent;

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(5) The identification of all witnesses providing evidence at the time the petition for summary suspension was presented and identification of the evidence used as a basis for the decision to issue the summary suspension order;

(6) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension; and

(7) A finding that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

History: Cr. Register, May, 1988, No. 389, eff. 6−1−88.

SPS 6.08 Service of summary suspension order. An order of summary suspension shall be served upon the respondent in the manner provided in s. 801.11, Stats., for service of summons.

History: Cr. Register, May, 1988, No. 389, eff. 6−1−88.

SPS 6.09 Hearing to show cause. (1) The respondent shall have the right to request a hearing to show cause why the summary suspension order should not be continued until the effective date of the final decision and order in the disciplinary action against the respondent.

(2) The request for hearing to show cause shall be filed with the licensing authority which issued the summary suspension order. The hearing shall be scheduled and heard promptly by the licensing authority but no later than 20 days after the filing of the request for hearing with the licensing authority, unless a later time is requested by or agreed to by the licensee.

(3) At the hearing to show cause the petitioner and the respondent may testify, call, examine and cross−examine witnesses, and offer other evidence.

(4) At the hearing to show cause the petitioner has the burden to show by a preponderance of the evidence why the summary suspension order should be continued.

(5) At the conclusion of the hearing to show cause the licensing authority shall make findings and an order. If it is determined that the summary suspension order should not be continued, the suspended license shall be immediately restored.

History: Cr. Register, May, 1988, No. 389, eff. 6−1−88.

SPS 6.10 Commencement of disciplinary proceeding. (1) A notice of hearing commencing a disciplinary proceeding under s. SPS 2.06 against the respondent shall be issued no later than 10 days following the issuance of the summary suspension order or the suspension shall lapse on the tenth day following issuance of the summary suspension order. The formal disciplinary proceeding shall be determined promptly.

(2) If at any time the disciplinary proceeding is not advancing with reasonable promptness, the respondent may make a motion to the hearing officer or may directly petition the appropriate board, or the department, for an order granting relief.

(3) If it is found that the disciplinary proceeding is not advancing with reasonable promptness, and the delay is not as a result of the conduct of respondent or respondent's counsel, a remedy, as would be just, shall be granted including:

(a) An order immediately terminating the summary suspension; or

(b) An order compelling that the disciplinary proceeding be held and determined by a specific date.

History: Cr. Register, May, 1988, No. 389, eff. 6−1−88; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 6.11 Delegation. (1) A board may by a two−thirds vote:

(a) Designate under s. 227.46 (1), Stats., a member of the board or an employee of the department to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. SPS 6.09; or

(b) Appoint a panel of no less than two−thirds of the membership of the board to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. SPS 6.09.

(2) In matters in which the department is the licensing authority, the department secretary or the secretary's designee shall rule on a petition for summary suspension, issue a summary suspension order, and preside over and rule in a hearing provided for in s. SPS 6.09.

(3) Except as provided in s. 227.46 (3), Stats., a delegation of authority under subs. (1) and (2) may be continuing.

History: Cr. Register, May, 1988, No. 389, eff. 6−1−88; **correction in (1) (a), (b), (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

Chapter SPS 7

PROFESSIONAL ASSISTANCE PROCEDURE

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Note: Chapter RL 7 was renumbered chapter SPS 7 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671

SPS 7.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority in ss. 15.08 (5) (b), 51.30, 146.82, 227.11 and 440.03, Stats.

(2) The intent of the department in adopting rules in this chapter is to protect the public from credential holders who are impaired by reason of their abuse of alcohol or other drugs by promoting early identification of chemically dependent professionals and encouraging rehabilitation. This goal will be advanced by providing an option that may be used in conjunction with the formal disciplinary process for qualified credential holders committed to their own recovery. This procedure is intended to apply when allegations are made that a credential holder has practiced a profession while impaired by alcohol or other drugs or whose ability to practice is impaired by alcohol or other drugs or when a credential holder contacts the department and requests to participate in the procedure. It may be used in conjunction with the formal disciplinary process in situations where allegations exist that a credential holder has committed misconduct, negligence or violations of law, other than practice while impaired by alcohol or other drugs. The procedure may then be utilized to promote early identification of chemically dependent professionals and encourage their rehabilitation. Finally, the department's procedure does not seek to diminish the prosecution of serious violations but rather it attempts to address the problem of alcohol and other drug abuse within the enforcement jurisdiction of the department.

(3) In administering this program, the department intends to encourage board members to share professional expertise so that all boards in the department have access to a range of professional expertise to handle problems involving impaired professionals.

History: Cr. Register, January, 1991, No. 421, eff. 2−1−91; am. (2), Register, July, 1996, No. 487, eff. 8−1−96; CR 10−081: am. (2) Register December 2010 No. 660, eff. 1−1−11.

SPS 7.02 Definitions. In this chapter:

(1) "Board" means any board, examining board or affiliated credentialing board attached to the department.

(2) "Board liaison" means the board member designated by the board or the secretary or the secretary's designee as responsible for approving credential holders for the professional assistance procedure under s. SPS 7.03, for monitoring compliance with the requirements for participation under s. SPS 7.04, and for performing other responsibilities delegated to the board liaison under these rules.

(2a) "Coordinator" means a department employee who coordinates the professional assistance procedure.

(2b) "Credential holder" means a person holding any license, permit, certificate or registration granted by the department or any board. For purposes of this chapter, "credential holder" includes a person with a pending application for a credential for a period not to exceed one year from the date the application for the credential was submitted to the department.

(3) "Department" means the department of safety and professional services.

(4) "Division" means the division of enforcement in the department.

(5) "Informal complaint" means any written information submitted by any person to the division, department or any board which requests that a disciplinary proceeding be commenced against a credential holder or which alleges facts, which if true, warrant discipline. "Informal complaint" includes requests for disciplinary proceedings under s. 440.20, Stats.

(6) "Medical review officer" means a medical doctor or doctor of osteopathy who is a licensed physician and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with an individual's medical history and any other relevant biomedical information.

(7) "Procedure" means the professional assistance procedure.

(8) "Program" means any entity approved by the department to provide the full scope of drug testing services for the department.

History: Cr. Register, January, 1991, No. 421, eff. 2−1−91; am. (1), (2), (5), cr. (2a), (2b), r. (6), Register, July, 1996, No. 487, eff. 8−1−96; cr. (6) and (8), Register, January, 2001, No. 541, eff. 2−1−01; CR 10−081: am. (1) to (2b), (7) Register December 2010 No. 660, eff. 1−1−11; **correction in (2), (3) made under s. 13.92 (4) (b) 6., 7., Register November 2011 No. 671.**

SPS 7.03 Referral to and eligibility for the procedure. (1) A credential holder who contacts the department and requests to participate in the procedure shall be referred to the board liaison and the coordinator for determination of acceptance into the procedure.

(2) A credential holder who has been referred to the procedure and considered for eligibility shall be provided with an application for participation.

(3) All informal complaints involving allegations of impairment due to alcohol or chemical dependency shall be screened and investigated pursuant to s. SPS 2.035. After investigation, informal complaints involving impairment may be referred to the procedure along with a summary of the investigative results in the form of a draft statement of conduct to be used as a basis for the statement of conduct under s. SPS 7.05 (1) (a) and considered for eligibility for the procedure or for formal disciplinary proceedings under ch. SPS 2. The credential holder shall be provided with a written explanation of the credential holder's options for resolution of the matter through participation in the procedure and of the formal disciplinary process pursuant to ch. SPS 2.

(4) Eligibility for the procedure shall be determined by the board liaison and coordinator who shall review all relevant materials including investigative results and the credential holder's application for participation. Eligibility shall be determined upon criteria developed by the coordinator in consultation with the disciplinary authority. The decision on eligibility shall be consistent with the purposes of these procedures as described in s. SPS 7.01 (2). Credential holders who have committed violations of law may be eligible for the procedure. The board liaison shall have

responsibility to make the determination of eligibility for the procedure.

(5) The credential holder shall obtain a comprehensive assessment for chemical dependency from a treatment facility or individual therapist approved under s. SPS 7.06. The credential holder shall arrange for the treatment facility or individual therapist to file a copy of its assessment with the board liaison or coordinator. The board liaison and the credential holder may agree to waive this requirement. The obtaining of the assessment shall not delay admission into the procedure.

(6) If a credential holder is determined to be ineligible for the procedure, the credential holder may be referred to the division for prosecution.

(7) A credential holder determined to be ineligible for the procedure by the board liaison or the department may, within 10 days of notice of the determination, request the credentialing authority to review the adverse determination.

History: Cr. Register, January, 1991, No. 421, eff. 2−1−91; am. (2) to (6), Register, July, 1996, No. 487, eff. 8−1−96; CR 10−081: renum. (1) and (3) to (6) to be (3) to (7) and am. (3) to (6), cr. (1), am. (2) Register December 2010 No. 660, eff. 1−1−11; **correction in (3), (4), (5) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 7.04 Requirements for participation. (1) A credential holder who participates in the procedure shall:

(a) Sign an agreement for participation under s. SPS 7.05.

(b) Remain free of alcohol, controlled substances, and prescription drugs, unless prescribed for a valid medical purpose.

(c) Timely enroll and participate in a program for the treatment of chemical dependency conducted by a facility or individual therapist approved pursuant to s. SPS 7.06.

(d) Comply with any treatment recommendations and work restrictions or conditions deemed necessary by the board liaison or department.

(e) Submit random monitored physiological specimens for the purpose of screening for alcohol or controlled substances provided by a drug testing program approved by the department under s. SPS 7.11, as required.

(f) Execute releases valid under state and federal law to allow access to the credential holder's counseling, treatment and monitoring records.

(g) Have the credential holder's supervising therapist and work supervisors file quarterly reports with the coordinator.

(h) Notify the coordinator of any changes in the credential holder's employer within 5 days.

(i) File quarterly reports documenting the credential holder's attendance at meetings of self−help groups such as alcoholics anonymous or narcotics anonymous.

(2) If the board liaison or department determines, based on consultation with the person authorized to provide treatment to the credential holder or monitor the credential holder's enrollment or participation in the procedure, or monitor any drug screening requirements or restrictions on employment under sub. (1), that a credential holder participating in the procedure has failed to meet any of the requirements set under sub. (1), the board liaison may refer the credential holder to the division. A failure to maintain abstinence is considered a relapse and shall be reviewed by the board liaison to determine whether the credential holder should be referred to the division. The board liaison may review the complete record in making this determination.

(3) If a credential holder violates the agreement and no referral to the division occurs, then a new admission under s. SPS 7.05 (1) (a) shall be obtained for relapses and for misconduct, negligence or violations of law which are substantial. If a new admission is not obtained, then a referral to the division by the coordinator shall occur.

History: Cr. Register, January, 1991, No. 421, eff. 2−1−91; am. Register, July, 1996, No. 487, eff. 8−1−96; am. (1) (e), Register, January, 2001, No. 541, eff. 2−1−01; CR 10−081: am. (1) (e), (f), (2), (3) Register December 2010 No. 660, eff. 1−1−11; **correction in (1) (a), (c), (e), (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 7.05 Agreement for participation. (1) The agreement for participation in the procedure shall at a minimum include:

(a) A statement describing conduct the credential holder agrees occurred relating to participation in the procedure and an agreement that the statement may be used as evidence in any disciplinary proceeding under ch. SPS 2.

(b) An acknowledgement by the credential holder of the need for treatment for chemical dependency;

(c) An agreement to participate at the credential holder's expense in an approved treatment regimen.

(d) An agreement to submit to random monitored drug screens provided by a drug testing program approved by the department under s. SPS 7.11 at the credential holder's expense, if deemed necessary by the board liaison.

(e) An agreement to submit to practice restrictions at any time during the treatment regimen as deemed necessary by the board liaison.

(f) An agreement to furnish the coordinator with signed consents for release of information from treatment providers and employers authorizing the release of information to the coordinator and board liaison for the purpose of monitoring the credential holder's participation in the procedure.

(g) An agreement to authorize the board liaison or coordinator to release information described in pars. (a), (c) and (e), the fact that a credential holder has been dismissed under s. SPS 7.07 (3) (a) or violated terms of the agreement in s. SPS 7.04 (1) (b) to (e) and (h) concerning the credential holder's participation in the procedure to the employer, therapist or treatment facility identified by the credential holder and an agreement to authorize the coordinator to release the results of random monitored drug screens under par. (d) to the therapist identified by the credential holder.

(h) An agreement to participate in the procedure for a period of time as established by the board.

(2) The board liaison may include additional requirements for an individual credential holder, if the circumstances of the informal complaint or the credential holder's condition warrant additional safeguards.

(3) The board or board liaison may include a promise of confidentiality that all or certain records shall remain closed and not available for public inspection and copying. Any promise is subject to s. SPS 7.08 and ends upon a referral to the division. Information and records may be made available to staff within the department on an as−needed basis, to be determined by the coordinator.

History: Cr. Register, January, 1991, No. 421, eff. 2−1−91; am. (1) (a) to (g) and (2), Register, July, 1996, No. 487, eff. 8−1−96; am. (1) (d), Register, January, 2001, No. 541, eff. 2−1−011; CR 10−081: am. (3) Register December 2010 No. 660, eff. 1−1−11; **correction in (1) (a), (d), (g), (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 7.06 Standards for approval of treatment facilities or individual therapists. (1) The board or board liaison shall approve a treatment facility designated by a credential holder for the purpose of participation in the procedure if:

(a) The facility is certified by appropriate national or state certification agencies.

(b) The treatment program focus at the facility is on the individual with drug and alcohol abuse problems.

(c) Facility treatment plans and protocols are available to the board liaison and coordinator.

(d) The facility, through the credential holder's supervising therapist, agrees to file reports as required, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

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(2) As an alternative to participation by means of a treatment facility, a credential holder may designate an individual therapist for the purpose of participation in the procedure. The board liaison shall approve an individual therapist who:

(a) Has credentials and experience determined by the board liaison to be in the credential holder's area of need.

(b) Agrees to perform an appropriate assessment of the credential holder's therapeutic needs and to establish and implement a comprehensive treatment regimen for the credential holder.

(c) Forwards copies of the therapist's treatment regimen and office protocols to the coordinator.

(d) Agrees to file reports as required to the coordinator, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(3) If a board liaison does not approve a treatment facility or therapist as requested by the credential holder, the credential holder may, within 10 days of notice of the determination, request the board to review the board liaison's adverse determination.

History: Cr. Register, January, 1991, No. 421, eff. 2−1−91; am. Register, July, 1996, No. 487, eff. 8−1−96; r. (1) (d) and (2) (d), renum. (1) (e) and (2) (e) to be (1) (d) and (2) (d) and am., Register, January, 2001, No. 541, eff. 2−1−01.

SPS 7.07 Intradepartmental referral. (2) The division may refer individuals named in informal complaints to the board liaison for acceptance into the procedure.

(3) The board liaison may refer cases involving the following to the division for investigation or prosecution:

(a) Credential holders participating in the procedure who fail to meet the requirements of their rehabilitation program.

(b) Credential holders who apply and who are determined to be ineligible for the procedure where the board liaison is in possession of information indicating misconduct, negligence or a violation of law.

(c) Credential holders who do not complete an agreement for participation where the board liaison is in possession of information indicating misconduct, negligence or a violation of law.

(d) Credential holders initially referred by the division to the board liaison who fail to complete an agreement for participation.

(e) Credential holders who request early termination of an agreement for participation. In making the decision if a referral should occur, the board liaison shall consider whether the credential holder's therapist approves the early termination and whether this opinion is supported by a second therapist selected by the department who shall always be consulted and shall concur.

(4) The board liaison shall refer credential holders who relapse in the context of the work setting to the division for investigation and prosecution. A credential holder referred under this subsection who has not been dismissed from the procedure may continue to participate in the procedure.

History: Cr. Register, January, 1991, No. 421, eff. 2−1−91; am. (1), (3) (a) to (d), Register, July, 1996, No. 487, eff. 8−1−96; CR 10−081: r. (1), am. (3) (a), (b), (c), cr. (3) (e), (4) Register December 2010 No. 660, eff. 1−1−11.

SPS 7.08 Records. (1) CUSTODIAN. All records relating to the procedure including applications for participation, agreements for participation and reports of participation shall be maintained in the custody of the department secretary or the secretary's designee.

(2) AVAILABILITY OF PROCEDURE RECORDS FOR PUBLIC INSPECTION. Any requests to inspect procedure records shall be made to the custodian. The custodian shall evaluate each request on a case by case basis using the applicable law relating to open records and giving appropriate weight to relevant factors in order to determine whether public interest in nondisclosure outweighs the public interest in access to the records, including the reputational interests of the credential holder, the importance of confidentiality to the functional integrity of the procedure, the existence of any promise of confidentiality, statutory or common law rules which accord a status of confidentiality to the records and the likelihood that release of the records will impede an investigation. The fact of a credential holder's participation in the procedure and the status of that participation may be disclosed to credentialing authorities of other jurisdictions.

(3) TREATMENT RECORDS. Treatment records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437, Stats., and their staffs and by treatment facilities are confidential under s. 51.30, Stats., and shall not be made available for public inspection.

(4) PATIENT HEALTH CARE RECORDS. Patient health care records are confidential under s. 146.82, Stats., and shall not be made available to the public without the informed consent of the patient or of a person authorized by the patient or as provided under s. 146.82 (2), Stats.

History: Cr. Register, January, 1991, No. 421, eff. 2−1−91; am. (2), Register, July, 1996, No. 487, eff. 8−1−96; CR 10−081: am. (2) Register December 2010 No. 660, eff. 1−1−11.

SPS 7.09 Report. The board liaison or coordinator shall report on the procedure to the board at least twice a year and if requested to do so by a board.

History: Cr. Register, January, 1991, No. 421, eff. 2−1−91; am. Register, July, 1996, No. 487, eff. 8−1−96.

SPS 7.10 Applicability of procedures to direct licensing by the department. This procedure may be used by the department in resolving complaints against persons licensed directly by the department if the department has authority to discipline the credential holder. In such cases, the department secretary shall have the authority and responsibility of the "board" as the term is used in the procedure and shall designate an employee to perform the responsibilities of the "board liaison."

History: Cr. Register, January, 1991, No. 421, eff. 2−1−91; am. Register, July, 1996, No. 487, eff. 8−1−96.

SPS 7.11 Approval of drug testing programs. The department shall approve drug testing programs for use by credential holders who participate in drug and alcohol monitoring programs pursuant to agreements between the department or boards and credential holders, or pursuant to disciplinary orders. To be approved as a drug testing program for the department, programs shall satisfactorily meet all of the following standards in the areas of program administration, collection site administration, laboratory requirements and reporting requirements:

(1) Program administration requirements are:

(a) The program shall enroll participants by setting up an account, establishing a method of payment and supplying preprinted chain−of−custody forms.

(b) The program shall provide the participant with the address and phone number of the nearest collection sites and shall assist in locating a qualified collection site when traveling outside the local area.

(c) Random selection of days when participants shall provide specimens shall begin upon enrollment and the program shall notify designated department staff that selection has begun.

(d) The program shall maintain a nationwide toll−free access or an internet website that is operational 24 hours per day, 7 days per week to inform participants of when to provide specimens and is able to document the date and time of contacts by credential holders.

(e) The program shall maintain and make available to the department and treatment providers through an internet website data that are updated on a daily basis verifying the date and time each participant was notified after random selection to provide a specimen, the date, time and location each specimen was collected, the results of drug screen and whether or not the participant complied as directed.

(f) The program shall maintain internal and external quality of test results and other services.

(g) The program shall maintain the confidentiality of participants in accordance with s. 146.82, Stats.

(h) The program shall inform participants of the total cost for each drug screen including the cost for program administration, collection, transportation, analysis, reporting and confirmation. Total cost shall not include the services of a medical review officer.

(i) The program shall immediately report to the department if the program, laboratory or any collection site fails to comply with this section. The department may remove a program from the approved list if the program fails to comply with this section.

(j) The program shall make available to the department experts to support a test result for 5 years after the test results are released to the department.

(k) The program shall not sell or otherwise transfer or transmit names and other personal identification information of the participants to other persons or entities without permission from the department. The program shall not solicit from participants presently or formerly in the monitoring program or otherwise contact participants except for purposes consistent with administering the program and only with permission from the department.

(L) The program and laboratory shall not disclose to the participant or the public the specific drugs tested.

(2) Collection site administration requirements are:

(a) The program shall locate, train and monitor collection sites for compliance with the U.S. department of transportation collection protocol under 49 CFR 40.

(b) The program shall require delivery of specimens to the laboratory within 24 hours of collection.

(3) Laboratory requirements are:

(a) The program shall utilize a laboratory that is certified by the U.S. department of health and human services, substance abuse and mental health services administration under 49 CFR 40. If the laboratory has had adverse or corrective action, the department shall evaluate the laboratory's compliance on a case by case basis.

(b) The program shall utilize a laboratory capable of analyzing specimens for drugs specified by the department.

(c) Testing of specimens shall be initiated within 48 hours of pickup by courier.

(d) All positive drug screens shall be confirmed utilizing gas chromatography in combination with mass spectrometry, mass spectrometry, or another approved method.

(e) The laboratory shall allow department personnel to tour facilities where participant specimens are tested.

(4) The requirements for reporting of results are:

(a) The program shall provide results of each specimen to designated department personnel within 24 hours of processing.

(b) The program shall inform designated department personnel of confirmed positive test results on the same day the test results are confirmed or by the next business day if the results are confirmed after hours, on the weekend or on a state or federal holiday.

(c) The program shall fax, e−mail or electronically transmit laboratory copies of drug test results at the request of the department.

(d) The program shall provide a medical review officer upon request and at the expense of the participant, to review disputed positive test results.

(e) The program shall provide chain−of−custody transfer of disputed specimens to an approved independent laboratory for retesting at the request of the participant or the department.

History: Cr. Register, January, 2001, No. 541, eff. 2−1−01; CR 10−081: am. (1) (d), (e) Register December 2010 No. 660, eff. 1−1−11.

Chapter SPS 8

ADMINISTRATIVE WARNINGS

SPS 8.01	Authority and scope.
SPS 8.02	Definitions.
SPS 8.03	Findings before issuance of an administrative warning.
SPS 8.04	Issuance of an administrative warning.
SPS 8.05	Request for a review of an administrative warning.
SPS 8.06	Procedures.
SPS 8.07	Transcription fees.

Note: Chapter RL 8 was renumbered chapter SPS 8 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 8.01 Authority and scope. Rules in this chapter are adopted under the authority of s. 440.205, Stats., to establish uniform procedures for the issuance and use of administrative warnings.

History: Cr. Register, January, 1999, No. 517, eff. 2−1−99.

SPS 8.02 Definitions. As used in s. 440.205, Stats., and in this chapter:

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

(2) "Department" means the department of safety and professional services.

(3) "Disciplinary authority" means the department or an attached examining board, affiliated credentialing board or board having authority to reprimand a credential holder.

(4) "Division" means the division of enforcement in the department.

(5) "First occurrence" means any of the following:

(a) The credential holder has never been charged as a respondent in a formal complaint filed under ch. SPS 2.

(b) Other than the matter pending before the disciplinary authority, no informal complaint alleging the same or similar misconduct has been filed with the department against the credential holder.

(c) The credential holder has not been disciplined by a disciplinary authority in Wisconsin or another jurisdiction.

(6) "Minor violation" means all of the following:

(a) No significant harm was caused by misconduct of the credential holder.

(b) Continued practice by the credential holder presents no immediate danger to the public.

(c) If prosecuted, the likely result of prosecution would be a reprimand or a limitation requiring the credential holder to obtain additional education.

(d) The complaint does not warrant use of prosecutorial resources.

(e) The credential holder has not previously received an administrative warning.

(7) "Misconduct" means a violation of a statute or rule related to the profession or other conduct for which discipline may be imposed under chs. 440 to 480, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2−1−99; **correction in (2), (5) (a) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.**

SPS 8.03 Findings before issuance of an administrative warning. Before issuance of an administrative warning, a disciplinary authority shall make all of the following findings:

(1) That there is specific evidence of misconduct by the credential holder.

(2) That the misconduct is a first occurrence for the credential holder.

(3) That the misconduct is a minor violation of a statute or rule related to the profession or other conduct for discipline may be imposed.

(4) That issuance of an administrative warning will adequately protect the public.

History: Cr. Register, January, 1999, No. 517, eff. 2−1−99.

SPS 8.04 Issuance of an administrative warning. (1) An administrative warning shall be substantially in the form shown in Appendix I.

(2) An administrative warning may be issued to a credential holder by mailing the administrative warning to the last address provided by the credential holder to the department. Service by mail is complete on the date of mailing.

History: Cr. Register, January, 1999, No. 517, eff. 2−1−99.

SPS 8.05 Request for a review of an administrative warning. A credential holder who has been issued an administrative warning may request the disciplinary authority to review the issuance of the administrative warning by filing a written request with the disciplinary authority within 20 days after the mailing of the administrative warning. The request shall be in writing and set forth:

(1) The credential holder's name and address.

(2) The reason for requesting a review.

History: Cr. Register, January, 1999, No. 517, eff. 2−1−99.

SPS 8.06 Procedures. The procedures for an administrative warning review are:

(1) Within 45 calendar days of receipt of a request for review, the disciplinary authority shall notify the credential holder of the time and place of the review.

(2) No discovery is permitted. A credential holder may inspect records under s. 19.35, Stats., the public records law.

(3) The disciplinary authority or its designee shall preside over the review. The review shall be recorded by audio tape unless otherwise specified by the disciplinary authority.

(4) The disciplinary authority shall provide the credential holder with an opportunity to make a personal appearance before the disciplinary authority and present a statement. The disciplinary authority may request the division to appear and present a statement on issues raised by the credential holder. The disciplinary authority may establish a time limit for making a presentation. Unless otherwise determined by the disciplinary authority, the time for making a personal appearance shall be 20 minutes.

(5) If the credential holder fails to appear for a review, or withdraws the request for a review, the disciplinary authority may note the failure to appear in the minutes and leave the administrative warning in effect without further action.

History: Cr. Register, January, 1999, No. 517, eff. 2−1−99.

SPS 8.07 Transcription fees. (1) The fee charged for a transcript of a review under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the

amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigence signed under oath.

History: Cr. Register, January, 1999, No. 517, eff. 2−1−99.

Chapter SPS 8

APPENDIX I

DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

[DISCIPLINARY AUTHORITY]

ADMINISTRATIVE WARNING

This administrative warning is issued by the {disciplinary authority} to {credential holder} pursuant to s. 440.205, Stats. The {disciplinary authority} makes the following findings:

1) That there is evidence of professional misconduct by {credential holder}, to wit:

2) That this misconduct is a first occurrence for {credential holder}.

3) That this misconduct is a minor violation of {statute or rule}.

4) That issuance of this administrative warning will adequately protect the public and no further action is warranted.

Therefore, the {disciplinary authority} issues this administrative warning and hereby puts the {credential holder} on notice that any subsequent violation may result in disciplinary action. The investigation of this matter is hereby closed.

Date:_____ _____

Signature of authorized representative
For {Disciplinary Authority}

Right to Review

You may obtain a review of this administrative warning by filing a written request with the {disciplinary authority} within 20 days of mailing of this warning. The review will offer the credential holder an opportunity to make a personal appearance before the {disciplinary authority}.

The record that this administrative warning was issued is a public record.

The content of this warning is private and confidential.

Chapter SPS 9

DENIAL OF RENEWAL APPLICATION BECAUSE APPLICANT IS LIABLE FOR DELINQUENT TAXES

SPS 9.01 Authority.
SPS 9.02 Scope; nature of proceedings.
SPS 9.03 Definitions.
SPS 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes.
SPS 9.05 Denial of renewal.

Note: Chapter RL 9 was renumbered chapter SPS 9 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 9.01 Authority. The rules in ch. SPS 9 are adopted under the authority in s. 440.03, Stats.

History: Emerg. cr. eff. 11−14−96; cr. Register, August, 1996, No. 488, eff. 9−1−96; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 9.02 Scope; nature of proceedings. The rules in this chapter govern the procedures for requesting the Wisconsin department of revenue to certify whether an applicant is liable for delinquent taxes owed to this state under s. 440.08 (4) (b), Stats., as created by 1995 Wis. Act 27 and amended by 1995 Wis. Act 233, to review denial of an application for renewal because the applicant is liable for delinquent taxes.

History: Emerg. cr. eff. 11−14−96; cr. Register, August, 1996, No. 488, eff. 9−1−96.

SPS 9.03 Definitions. In this chapter:

(1) "Applicant" means a person who applies for renewal of a credential. "Person" in this subsection includes a business entity.

(2) "Credential" has the meaning in s. 440.01 (2) (a), Stats.

(3) "Department" means the department of safety and professional services.

(4) "Liable for any delinquent taxes owed to this state" has the meaning set forth in s. 73.0301 (1) (c), Stats.

History: Emerg. cr. eff. 11−14−96; Cr. Register, August, 1996, No. 488, eff. 9−1−96; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register November 2007 No. 623; **correction in (3) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.**

SPS 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes. (1) RENEWAL APPLICATION FORM. If the department receives a renewal application that does not include the information required by s. 440.08 (2g) (b), Stats., the application shall be denied unless the applicant provides the missing information within 20 days after the department first received the application.

Note: 1997 Wis. Act 191 repealed s. 440.08 (2g) (b), Stats., and created s. 440.03 (11m), Stats. Section SPS 9.04 (1), Wis. Adm. Code, was affected by the statutory changes in 1997 Wis. Act 191, is no longer necessary, and will be removed in future rule−making by the department.

(2) SCREENING FOR LIABILITY FOR DELINQUENT TAXES. The name and social security number or federal employer identification number of an applicant shall be compared with information at the Wisconsin department of revenue that identifies individuals and organizations who are liable for delinquent taxes owed to this state.

(3) NOTICE OF INTENT TO DENY BECAUSE OF TAX DELINQUENCY. If an applicant is identified as being liable for any delinquent taxes owed to this state in the screening process under sub. (2), the Wisconsin department of revenue shall mail a notice to the applicant at the last known address of the applicant according to s. 440.11, Stats., or to the address identified in the applicant's renewal application, if different from the address on file in the department. The notice shall state that the application for renewal submitted by the applicant shall be denied unless, within 10 days from the date of the mailing of the notice, the department of safety and professional services receives a copy of a certificate of tax clearance issued by the Wisconsin department of revenue which shows that the applicant is not liable for delinquent state taxes or unless the Wisconsin department of revenue provides documentation to the department showing that the applicant is not liable for delinquent state taxes.

(4) OTHER REASONS FOR DENIAL. If the department determines that grounds for denial of an application for renewal may exist other than the fact that the applicant is liable for any delinquent taxes owed to this state, the department shall make a determination on the issue of tax delinquency before investigating other issues of renewal eligibility.

History: Emerg. cr. eff. 11−14−96; cr. Register, August, 1996, No. 488, eff. 9−1−96; **correction in (3) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.**

SPS 9.05 Denial of renewal. The department shall deny an application for credential renewal if the applicant fails to complete the information on the application form under s. SPS 9.04 or if the Wisconsin department of revenue certifies or affirms its certification under s. 440.08 (4) (b) 3., Stats., that the applicant is liable for delinquent taxes and the department does not receive a current certificate of tax clearance or the Wisconsin department of revenue does not provide documentation showing that the applicant is not liable for delinquent taxes within the time required under s. SPS 9.04 (2) and (3). The department shall mail a notice of denial to the applicant that includes a statement of the facts that warrant the denial under s. 440.08 (4) (b), Stats., and a notice that the applicant may file a written request with the department to have the denial reviewed at a hearing before the Wisconsin department of revenue.

Note: 1997 Wis. Act 237 repealed s. 440.08 (4) (b), Stats. 19997 Wis. Act 237 also created s. 440.12, Stats.; both statutory references in s. SPS 9.05, Wis. Admin. Code, should be to s. 440.12, Stats. Future rule−making by the department will correct these references.

History: Emerg. cr. eff. 11−14−96; cr. Register, August, 1996, No. 488, eff. 9−1−96; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

Chapter SPS 127

SALE OF REAL ESTATE AT AUCTION

SPS 127.01 Authority.
SPS 127.02 Auction of real estate.
SPS 127.03 Limitations.
SPS 127.04 Contract.
SPS 127.05 Real estate subject to exclusive listing contract.
SPS 127.06 Solicitation of owners with exclusive listing contract prohibited.

Note: Chapter RL 127 was renumbered chapter SPS 127 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 127.01 Authority. The rules in this chapter are adopted under authority in ss. 227.11 (2), 480.01, 480.14 and 480.16, Stats.

History: Cr. Register, June, 1996, No. 486, eff. 7−1−96.

SPS 127.02 Auction of real estate. (1) AUCTIONEER. An auctioneer may engage in, or advertise or otherwise hold himself or herself out as being available to engage in, the calling for and the recognition and acceptance of offers for the purchase of real estate at an auction, and may handle sales proceeds, down payments, earnest money deposits or other trust funds received by the auctioneer on behalf of the auctioneer's principal or any other person at or as a result of an auction of real estate.

(2) AUCTION COMPANY. An auction company may manage an auction of real estate and may have primary responsibility for handling sales proceeds, down payments, earnest money deposits or other trust funds received by the auction company on behalf of the auction company's principal or any other person at or as a result of an auction of real estate.

History: Cr. Register, June, 1996, No. 486, eff. 7−1−96.

SPS 127.03 Limitations. (1) REGISTRANT LICENSED AS A REAL ESTATE BROKER OR SALESPERSON. A registrant who is licensed as a real estate broker and who conducts an auction of real estate listed for sale with the registrant, or a registrant who is licensed as a real estate broker or salesperson and who conducts an auction of real estate listed for sale with the registrant's real estate broker−employer, may prepare contracts or other documents necessary to transfer title to the real estate or conduct any other activities requiring a real estate license under ch. 452, Stats., and chs. REEB 11 to 26.

(2) REGISTRANT NOT LICENSED AS A REAL ESTATE BROKER OR SALESPERSON. (a) A registrant who is not licensed as a real estate broker or salesperson may, in connection with an auction of real estate:

1. Distribute written information describing real estate or the condition of the real estate to be auctioned, if the information has been made available by the owner of the real estate or a real estate licensee.

2. Provide access to real estate for the purpose of permitting prospective buyers to view the real estate.

3. Conduct inquiries in person, by telephone or by other media to determine whether the person being contacted is interested in bidding upon the real estate to be auctioned.

4. Perform other tasks relating to conducting an auction which do not require a real estate license under ch. 452, Stats.

(b) A registrant who is not licensed as a real estate broker or salesperson may not perform activities which require a real estate license under ch. 452, Stats., including but not limited to:

1. Preparing any contracts or other documents necessary to transfer title to real estate.

2. Distributing to prospective buyers written information about the real estate or conditions affecting the real estate which has not been provided by the owner of the real estate or the owner's agent.

3. Negotiating with a prospective buyer within the meaning of s. 452.01 (5m), Stats., other than by conducting an auction.

History: Cr. Register, June, 1996, No. 486, eff. 7−1−96; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 127.04 Contract. A registrant shall have a written contract with the owner of real estate to be sold at an auction, or the owner's agent, which specifies the terms and conditions upon which the auctioneer or auction company accepts the real estate for sale at auction. The following conditions apply to the contract:

(1) A registrant who is licensed as a real estate broker under ch. 452, Stats., shall use the appropriate approved listing contract form required under s. REEB 16.03, when contracting with the owner to conduct an auction of real estate, and shall include provisions which comply with s. SPS 124.02.

(2) A registrant who is licensed as a real estate salesperson shall use the appropriate approved listing contract form required under ch. REEB 16, when contracting with the owner to conduct an auction of real estate if the salesperson is employed by a real estate broker, and shall include provisions which comply with s. SPS 124.02.

(3) A registrant who is not licensed as a real estate broker or salesperson under ch. 452, Stats., shall use a contract that complies with s. SPS 124.02.

History: Cr. Register, June, 1996, No. 486, eff. 7−1−96; **correction in (1), (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 127.05 Real estate subject to exclusive listing contract. Prior to entering into any contract for the sale of real estate at an auction, the registrant shall determine whether the real estate is subject to an exclusive real estate listing contract. If the real estate to be sold at an auction is subject to an exclusive real estate listing contract between the seller and a real estate broker other than the registrant, the registrant:

(1) May only enter into a contract under s. SPS 127.04, with the real estate broker holding the exclusive real estate listing contract on the real estate.

(2) May not receive any sales proceeds, down payments, earnest money deposits or other trust funds as a result of an auction of the real estate, unless the contract under sub. (1) authorizes the registrant to do so.

History: Cr. Register, June, 1996, No. 486, eff. 7−1−96; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

SPS 127.06 Solicitation of owners with exclusive listing contract prohibited. A registrant may not solicit an owner of real estate to sell the real estate at an auction if the registrant knows that the real estate is subject to an exclusive real estate listing contract.

History: Cr. Register, June, 1996, No. 486, eff. 7−1−96.