CHAPTER 490

FLORIDA PSYCHOLOGICAL PRACTICE ACT

490.12 Short title.—This chapter shall be known as the "Florida Psychological Practice Act."

History.—s. 1, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

490.13 Objects and purposes of chapter.—The practice of psychology is declared to be a profession affecting the public welfare and subject to regulation and control in the public interest. The profession of psychology must merit and receive the confidence of the public, and only qualified psychologists must be permitted to practice the profession of psychology in the state. All provisions of this chapter relating to the practice of psychology shall be liberally construed to carry out these objects and purposes.

History.—s. 2, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

490.14 Definitions and application.—

(1) A person represents himself to be a psychologist when he holds himself out to the public by any title or description of services incorporating the word "psychology," "psychologist," or "psychological" or offers to render or renders psychological services to individuals, groups, organizations, or the public any service involving the application of principles, methods, and procedures of understanding, predicting and influencing behavior. Included are the principles pertaining to learning, perception, motivation, thinking, emotion, and interpersonal relationships.

(2) The practice of psychology and the rendering of psychological services within the meaning of this chapter is defined as rendering to individuals, groups, organizations, or the public any service involving the application of principles, methods, and procedures of understanding, predicting and influencing behavior. Included are the principles pertaining to learning, perception, motivation, thinking, emotion, and interpersonal relationships.

(3) Psychologists licensed under this chapter may, within the limits of their individual competence and preparation, apply the methods and procedures of interviewing and counseling and the methods and procedures of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, and motivations. The application of such principles, methods, and procedures includes, but is not restricted to psychological diagnostic assessment, prevention and amelioration of adjustment problems and behavioral disorders of individuals and groups, psychological hypnosis, educational and vocational counseling, personnel selection and management development, evaluation and planning for effective work and learning situations, advertising and market research, the resolution of interpersonal and social conflict, lecturing on or teaching of psychology, and the design and conduct of psychological research.

(4) Nothing in this chapter shall be construed to limit or obstruct the practice of other recognized businesses and professions or to prevent qualified members of other professional groups from doing work of a psychological nature consistent with their training and with any code of ethics of their respective professions designed for the protection of the public if they do not hold themselves out to the public by any title or description incorporating the words "psychological," "psychologist," or "psychology."

History.—s. 3, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

490.15 Board of Examiners of Psychology; membership, duties, powers, etc.—

(1) There is created the Florida State Board of Examiners of Psychology, hereinafter referred to as the board, with duties and powers as hereinafter defined and provided.

(2) The board shall consist of five licensed psychologists appointed by the Governor for terms of 4 years, provided the members of the Florida State Board of Examiners of Psychology serving under the provisions of chapter 490 on July 1, 1970, shall continue in office as members of the board until their respective terms expire or are otherwise terminated. The board shall organize by electing a president, a vice president, and a secretary. All appointments to fill vacancies created other than by expiration of a term shall be for the unexpired term, and all terms shall expire on December 31 of the last year of the term.

(3) On or before December 1 of each year, the Florida Psychological Association shall nominate three candidates from among its membership, who
shall be licensed psychologists, for the next occurring vacancy on the board, and from these nominees, when regularly submitted and certified by the president and secretary of the association, the Governor may make his appointment for the vacancy or vacancies occurring in the board. Each appointee to the board shall, in accordance with the board's resolution before entering upon the discharge of his official duties, take the oath of office prescribed by the Constitution for officers of the state.

(4) The board may employ agents, an attorney, clerical help, and others for the proper conduct of the office and for such other purposes as may be deemed necessary.

(5) The president of the board shall preside at all meetings, and in his absence or inability to preside, the vice president shall so act. In their absence or inability to preside, the remaining member who was first appointed to the board shall so act.

(6) The secretary of the board shall be the executive officer in charge of the board's office. He shall receive a salary to be fixed by the board. He shall make, keep, and be in charge of all records and record books required to be kept by the board, attend to the correspondence of the board, mail to each applicant for registration by examination a notice stating whether or not the applicant has satisfactorily passed the examination, and perform such other duties as the board may require, in keeping with the official duties of the office according to law.

(7) The secretary of the board shall furnish a bond, in an amount to be fixed by the board, conditioned upon the faithful performance and discharge of the duties of the office according to law.

(8) The board is authorized to make such rules and regulations inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety and welfare of the public. The board may, by rule or regulation, adopt, amend or repeal rules of professional ethics appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession.

History.—s. 4, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

'490.17 License required.—It shall be unlawful for anyone to practice psychology in the state without first procuring a license and license certificate in accordance with the provisions of this chapter.

History.—s. 5, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

'490.18 Application for examination.—All applications for examination as a psychologist shall be made on a form to be supplied by the board and filed with the secretary of the board at least 90 days before any meeting of the board at which examinations are to be held. Each application shall be accompanied by an examination fee of $100. No examination fee shall be refundable.

History.—s. 6, ch. 70-294; s. 2, ch. 74-354; s. 1, ch. 75-173; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

'490.19 Qualifications of applicants for examination; examination of applicants; subjects, etc.—

(1) The board shall examine by written or oral examination, or both, under such rules and regulations as the board may prescribe, every applicant for examination as a psychologist who has paid the fees specified in s. 490.18 and satisfied the board that he:

(a) Is of good moral character;

(b) Conforms to the ethical standards of the profession as adopted by the board;

(c) Has received a doctoral degree in psychology from a university that has a program approved by the American Psychological Association or has received a doctoral degree in psychology from a university maintaining a standard of training comparable to those universities having programs approved by the American Psychological Association;

(d) Has had at least 2 years' or 4,000 hours' full-time experience in the field of psychology, in association with, or under the supervision of, a psychologist meeting the academic and experience requirements of this chapter. The experience requirement may be met by work performed on or off the premises of the supervising psychologist. No more than 1 year of predoctoral experience may be utilized in satisfying the experience required.

(2) Examination papers shall be designated by number and not by name of applicant, so that the identity of the applicant will not be disclosed to members of the board until after the examination papers are graded.

(3) A list of subjects in which examinations are to be given will be available upon request.

(4) The minimum passing grade shall be established by the board.

(5) All examination papers shall be filed with the
secretary of the board who shall make a record of the grade of each applicant on each subject, and the grade shall be a part of the examination papers which shall be preserved for 2 years.

History. — s. 7, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 1, ch. 77-247; s. 1, ch. 77-457.

Note. — Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

490.20 Licenses; license certificates.—If an applicant makes a passing grade on the examination for psychologists, he shall be granted a license by the board, and a license certificate signed by a majority of the board shall be issued, which certificate shall be evidence of his right to practice psychology. Any applicant failing to pass the examination shall be entitled to a reexamination upon the payment of an additional fee of $40 for the psychology examination, but two such reexaminations shall exhaust the privilege under the original application.

History. — s. 3, ch. 76-168; s. 1, ch. 77-457.

Note. — Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

490.21 Certificate to be displayed.—Each person to whom a certificate is issued by renewal, upon examination, or by reissue of the board shall keep the certificate conspicuously displayed in his office or place of business and shall, whenever required, exhibit the certificate to any member or authorized representative of the board. It is unlawful for any licensing agency, either state, county, or municipal, to issue an occupational license to any person to practice psychology unless the applicant therefor shall first exhibit to such official a current license issued by the board showing the applicant is qualified in all respects to practice psychology in accordance with the terms of this chapter.

History. — s. 9, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note. — Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

490.22 Licensing under special conditions.—(1) The board may waive the examination for applicants who have been recognized as diplomates in a field of psychology by the American Board of Professional Psychology, and such applicants shall be entitled to the issuance of a license and license certificate upon payment of the fees provided in s. 490.18.

(2) The board may waive the examination for applicants who present proof of current certification or licensure which standards at least stand equal to those for licensure in Florida, and such applicants are entitled to receive a license and license certificate upon payment of the fees provided for in s. 490.18.

History. — s. 11, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note. — Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

490.23 Exemptions.—(1) Nothing in this chapter shall be construed to restrict or prevent activities of a psychological nature on the part of:

(a) Psychologists who are salaried employees of accredited academic institutions, governmental agencies, and research institutions if such employees are performing those duties for which they were hired and are performing those duties solely within the confines of such organization.

(b) Psychologists who are salaried employees of accredited academic institutions, governmental agencies, and research institutions who consult, offer their findings, or provide scientific information to other such accredited academic institutions, governmental agencies, and research institutions for a fee, monetary or otherwise. Such persons may also offer lectures to the public for a fee, monetary or otherwise. However, psychologists who are salaried employees of accredited academic institutions, governmental agencies, or research institutions must be licensed under the provisions of this chapter if they are providing psychological services to the public for considerations over and above the salary that they receive for the performance of their regular duties with such organizations.

(2) Nothing in this chapter shall be construed as restricting the activities and services of a graduate student or psychological intern in psychology pursuing a course of study leading to a graduate degree in psychology at a college or university and working in a training center if these activities and services constitute a part of his supervised course of study and such persons are designated by such title as "psychological intern," "psychological trainee," or other such title clearly indicating the training status appropriate to his level of training. The term "psychological intern" however, shall be reserved for persons enrolled in the doctoral program in psychology at a college or university.

(3) Nothing in this chapter shall be construed as restricting a psychologist from another state offering his psychological services in this state if such services are performed for no more than 5 days in any calendar year.

History. — s. 1, ch. 70-294; s. 1, ch. 77-457.

(c) Has been granted a diploma of the American Board of Professional Psychology,

may offer professional psychological services in this state for a total of not more than 30 days in any calendar year without being licensed under this chapter.

(4) Nothing in this chapter shall be construed as restricting the use of the term "social psychologist" by any person:

(a) Who has been graduated with a doctoral degree in sociology or social psychology from an educational institution offering accredited courses in sociology or social psychology,

(b) Who has passed comprehensive examinations in the field of social psychology as part of the requirements for the doctoral degree or has had equivalent specialized training in social psychology, and
(c) Who has filed with the board a statement of the facts demonstrating his compliance with the conditions expressed in paragraphs (a) and (b).

However, if such a "social psychologist" offers psychological services or holds himself out to the public as practicing psychology as defined in this chapter, he must be licensed under the provisions of this chapter.

History.--s. 12, ch. 70-294; s. 3, ch. 76-168, s. 1, ch. 77-457.

Note.--Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

'490.24 Person certified under prior laws.--All persons heretofore certified as psychologists in Florida according to the provisions of law existing at the time of such certification shall be deemed to be licensed as psychologists under the provisions of this chapter.

History.--s. 13, ch. 70-294; s. 3, ch. 76-168, s. 1, ch. 77-457.

Note.--Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

'490.25 Renewal of licenses.--

(1) Every person lawfully engaged in the practice of psychology on July 1, 1970, and every person hereafter duly licensed to practice psychology shall, on or before January 1 of each year, apply to the secretary of the board for a license certificate upon a blank form to be furnished by the secretary and shall pay at that time a renewal fee, not to exceed $50, with the exact amount to be determined by the board each year. The license of any psychologist who fails or neglects to renew his license by January 1 of any year as required herein shall be automatically suspended until such time as the psychologist shall register and pay the regular annual fee plus a delinquency fee of $20 for each year or fraction thereof that he fails to register.

(2)(a) The secretary of the board, on or before October 1 of each year, shall mail or cause to be mailed to each licensed psychologist a blank form of application for registration addressed to the last known post-office address of such psychologist.

(b) Every psychologist licensed under the provisions of this chapter shall be responsible for keeping on file with the secretary of the board his latest mailing address. The address on file shall be considered correct for the purposes of this subsection.

(3) The secretary shall issue to any duly licensed psychologist in this state upon his application therefor, in accordance with the provisions hereof, a renewal certificate under the seal of the board for the 1 year ensuing and ending December 31.

History.--s. 14, ch. 70-294; s. 4, ch. 74-354; s. 2, ch. 75-173; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.--Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

'490.26 Refusal to grant or renew licenses; revocation, suspension, reinstatement; civil penalties.--

(1) The board may refuse to grant or renew, or may revoke or suspend, a license on any of the following grounds:

(a) Use of fraud or deception in applying for a license or in taking the examination required by this chapter.

(b) Practice of psychology under a false or assumed name, impersonation of a licensed psychologist of like or different name, or permitting an unlicensed person to practice psychology in the name of the licensee or to use his license for that purpose.

(c) Conviction of a felony or any offense which, if committed in this state, would constitute a felony under the laws of Florida.

(d) Habitual use of intoxicating liquors, narcotics, or stimulants to such an extent as to impair the performance of professional duties.

(e) Violations of any provision of this chapter or rule, regulation, or code of ethics promulgated by the board, or failure to comply with a cease and desist order.

(f) Negligence or misconduct in the performance of his professional duties as a licensed psychologist.

(2) In lieu of the suspension or revocation of licenses or permits, the Florida State Board of Examiners of Psychology, after notice and hearing, may impose a civil penalty against any licensee for violation of this chapter or any rule or regulation promulgated by the board. No penalty so imposed shall exceed $500 for each count or separate offense, and all penalties imposed and collected shall be deposited with the State Treasurer to the credit of the General Revenue Fund.

(3) The board shall not refuse to grant, and shall not revoke or suspend, the license of any person for any of the foregoing reasons until after a hearing of the charges against the accused, which shall be public unless the accused requests a private hearing thereon, after giving at least 30 days' prior written notice to the accused of the charges against him and of the date fixed for such hearing. The written notice shall be mailed by certified or registered mail to the accused's last known address, but the accused's failure to appear shall not prevent or invalidate such hearing or any action taken by the board at such meeting. Every action of the board in refusing to issue a license or suspending or revoking a license pursuant to this section shall be subject to review by appeal to a court of competent jurisdiction in this state.

(4) Application may be made to the board for reinstatement at any time after the expiration of 1 year from the date of the refusal to grant or renew, or the revocation or suspension of, a license. The application shall be in writing. The board shall not reinstate any applicant unless satisfied that he is competent to engage in the practice of psychology and has paid a reinstatement fee of $100, and if it deems it necessary for such determination, the board may require the applicant to pass an examination.

History.--s. 15, ch. 70-294; s. 5, ch. 74-354; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.--Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

'490.27 Authority to enjoin violations; temporary restraining orders; investigations.--

(1) If it appears that a person has engaged, or is about to engage, in an act or practice constituting a violation of a provision of this chapter or a rule or order hereunder, the board, with or without prior administrative proceedings, may bring an action in the circuit court to enjoin the act or practice and to enforce compliance with this chapter or any rule or order hereunder. Upon proper showing, injunc-
490.30 Disposition of fees; expenditures.—All moneys received by the board under this chapter shall be deposited and expended pursuant to s. 215.37. All expenditures authorized by this chapter shall be paid upon presentation of vouchers approved by the secretary of the board.

History.—s. 19, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.

‘490.31 Penalties.—It is unlawful for any person not licensed under the provisions of this chapter to advertise or render the services covered under s. 490.14. Any person convicted of violating a provision of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 20, ch. 70-294; s. 443, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

‘490.32 Psychologists as witnesses; nondisclosure of communications.—
(1) A person who, for the purpose of securing psychological diagnostic assessment or counseling, consults a psychologist licensed to practice psychology in this state, except as hereinafter provided, in civil and criminal cases, in proceedings preliminary thereto, and in legislative and administrative proceedings, has a privilege to refuse to disclose and to prevent a witness from disclosing communications between himself and the psychologist or between members of his family and the psychologist or records relating to his diagnostic psychological testing or counseling.

(2) There shall be no privilege for any relevant communications under this section:
(a) If a judge finds that the person evaluated by a psychologist, after having been informed that the communications would not be privileged, has made communications to a psychologist in the course of a psychological examination ordered by the court. However, such communications shall be admissible only on issues involving the person’s mental or psychological condition.
(b) In a criminal or civil proceeding in which the person introduces his mental or psychological condition as an element of his claim or defense or, after his death, when said condition is introduced by any party claiming or defending through or as his beneficiary.

History.—s. 21, ch. 70-294; s. 2, ch. 76-237; s. 1, ch. 77-457.

‘490.33 Construction as to licensee’s authority to practice medicine.—Nothing contained in this chapter shall be construed to permit a licensee hereunder to engage in the practice of medicine as defined in chapter 458.

History.—s. 22, ch. 70-294; s. 3, ch. 76-168; s. 1, ch. 77-457.
SANITARIANS’ REGISTRATION ACT

CHAPTER 491
SANITARIANS’ REGISTRATION ACT

491.01 Title.—This act shall be cited as the “Sanitarians’ Registration Act.”

History.—s. 1, ch. 59-191; s. 3, ch. 76-168.
Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

491.02 Definitions.—In this act, unless the context otherwise requires:

(1) “Sanitarian” means a person whose education and experience in the biological and sanitary sciences qualify him to engage in the promotion and protection of the public’s health. He applies technical knowledge to solve problems of a sanitary nature and develops methods and carrys out procedures for the control of those factors of men’s environment which affect his health, safety, and well being.

(2) “Registered sanitarian” means any person who is the holder of a current certificate of registration issued by the Sanitarians’ Registration Board.

(3) “Certificate of registration” means a document showing the name of the registrant, the date of issue, serial number and the signature of those authorized by this act to grant it.

(4) “Environmental sanitation” means the sanitary control of man’s physical surroundings and within it those factors which may adversely influence and affect his health, safety and welfare. Nothing herein shall conflict with the practice of professional engineering or the provisions of chapter 20621, Laws of 1941 (ss. 471.01-471.33).

(5) “Board” means the Sanitarians’ Registration Board as provided for in s. 491.03.

(6) “Merit system” means the state career service system.

(7) “Civil service” means an accredited civil service board within this state.

History.—s. 2, ch. 59-191; s. 4, ch. 67-437; ss. 31, 35, ch. 69-106; s. 3, ch. 76-168.
Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

491.03 Sanitarians’ Registration Board.—

(1) After May 30, 1959, the Governor shall appoint five qualified sanitarians as defined in this law from a list submitted to him by recognized associations of sanitarians within the state who have been employed as sanitarians in Florida for the past 5 consecutive years and who shall constitute the Sanitarians’ Registration Board.

(2) The Secretary of Health and Rehabilitative Services or his designated representative shall be an ex officio member of the board.

(3) The terms of the first board members shall be for 1, 2, 3, and two members for 4 years, respectively, beginning on the date of appointment. The terms of their successors shall be 4 years. Appointments for vacancies shall be for the unexpired term.

(4) Members of the board shall receive $10 per day, or any part of a day, while attending official board meetings and shall receive per diem and mileage as provided by law.

History.—s. 2, ch. 59-191; s. 181, ch. 71-377; s. 3, ch. 76-168; s. 414, ch. 77-147.
Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

491.04 General powers and duties of board.—

(1) The board is authorized to adopt rules and regulations which may be determined by it to be needed to carry out the mechanics and procedures to effectuate this act and may amend and revoke such rules at its discretion; provided that after the original adoption of the rules and regulations that no change in such rules and regulations shall be effective unless the board has filed such rules or regulations in the office of the Department of State six months prior to that change.

(2) The board is authorized to employ secretarial assistance and to fix his compensation, and to pay its necessary administrative expenses provided, however, that all moneys paid out under this act shall be paid solely from the revenue received pursuant to the terms of this act.

(3) It shall be the duty of this board to carry out the provisions of this act, except appoint members thereto, review applications for registration, conduct written and oral examinations, keep records of its transactions, conduct hearings, make an annual and financial report and record all matters which appropriately may come before it. These records shall at reasonable times be open to examination by the public. Copies of the annual and financial reports shall be mailed to all registered sanitarians.

History.—s. 4, ch. 59-191; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168.
Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

491.05 Board, organization and headquarters.—The board shall elect annually from its membership a chairman, a vice-chairman, and a secretary-treasurer. The headquarters of the board shall be in the city where the secretary-treasurer resides. Meetings of the board shall be called by the chairman as prescribed by the rules and regulations of the board. At meetings a majority of the board shall constitute a quorum for the transaction of business.

History.—s. 5, ch. 59-191; s. 3, ch. 76-168.
Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.
1491.06 Qualifications for registration.—To be eligible for registration by the board as a sanitarian an applicant must:

(1) Be at least 18 years old and a resident of this state.
(2) Be of good moral character as determined by the board.
(3) Have been graduated with a 4-year degree from a college or university.
(4) Pass, to the satisfaction of the board, an examination by the board.

No sanitarian may practice pest control unless qualified under chapter 482.

History.—s. 6, ch. 59-191; s. 4, ch. 65-205; s. 3, ch. 76-168; s. 184, ch. 77-104; s. 1, ch. 77-118; s. 41, ch. 77-121.

1 Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

1491.08 Application for registration.—A person desiring to be registered as a sanitarian shall apply to the secretary of the board in writing, on a blank furnished by the board. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required under s. 491.06. He shall pay to the board at the time of filing his application a fee of not less than $25 or more than $50 to be fixed annually by the board.

History.—s. 8, ch. 59-191; s. 1, ch. 65-482; s. 1, ch. 73-36; s. 3, ch. 76-168; s. 184, ch. 77-104.

1 Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

1491.09 Examinations.—The board shall hold examinations for applicants for registration as sanitarians who have qualified under s. 491.08, at approximately 6-month intervals in a major city of Florida in some convenient place to be selected by the board. Examinations will be given in the following subjects:

1 Sanitary laws, code, rules and regulations;
2 Milk and food sanitation;
3 Water supply, sewage and garbage disposal;
4 Insect and pest control;
5 Bacteriology and communicable diseases.

History.—s. 9, ch. 59-191; s. 3, ch. 76-168.

1 Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

1491.10 Certificates of registration.—The board shall register as a sanitarian and shall furnish a certificate of registration to each applicant who successfully passes the examination for registration as a sanitarian.

History.—s. 10, ch. 59-191; s. 3, ch. 76-168; s. 184, ch. 77-104.

1 Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

1491.11 Renewal of certificate, fee.—Certificates of registration shall be renewable annually on or before January 1 upon the submission of application on forms mailed by the secretary-treasurer of the board to each registered sanitarian in the state at his last known post office address on October 1 of the preceding year. A fee of not less than $5 or more than $15, to be fixed annually by the board, shall accompany each application for renewal. Certificates of registration shall expire on January 1 of each year.

History.—s. 11, ch. 59-191; s. 2, ch. 65-482; s. 2, ch. 73-36; s. 3, ch. 76-168.

1 Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

1491.12 Refusal, revocation, or suspension of certificate of registration.—The board may refuse to issue or renew, or may suspend or revoke a license for any one or any combination of the following reasons:

1 Habitual use of intoxicating liquors, narcotics or stimulants to such an extent as to incapacitate the performance of professional duties;
2 Fraud in the practice of sanitation or deceit in obtaining registration as a sanitarian;
3 Conviction in a court of competent jurisdiction of a felony. The conviction of a felony shall be the conviction of any offense which, if committed in this state, would constitute a felony under the laws of this state; provided, the accused person has been given an opportunity by the board for a public hearing 30 days after notice by registered mail of the hearing.

History.—s. 12, ch. 59-191; s. 3, ch. 76-168.

1 Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

1491.13 Title and abbreviations.—Any person who holds a certificate of registration under this act may use the title "Registered Sanitarian" or the abbreviation "R.S."

History.—s. 13, ch. 59-191; s. 3, ch. 76-168.

1 Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

1491.14 False claim of registration.—Any person who is not registered or whose certificate of registration is suspended or revoked shall not use in connection with his name the title "Registered Sanitarian" or the abbreviation "R.S." or any other words, letters or insignia indicating that he is a registered sanitarian, nor shall he either directly or indirectly represent himself as being a registered sanitarian.

History.—s. 14, ch. 59-191; s. 3, ch. 76-168.

1 Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

1491.15 Fraud in obtaining registration.—No person shall obtain or attempt to obtain a certificate of registration by any willful misrepresentation or any fraudulent representation.

History.—s. 15, ch. 59-191; s. 3, ch. 76-168.

1 Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

1491.16 Disposition of fees; expenses of board.

All moneys received by the board under this chapter shall be paid to the secretary-treasurer of said board. Such moneys shall be deposited and expended pursuant to the provisions of s. 215.37. All expenditures authorized by this chapter shall be paid upon presentation of vouchers approved by the chairman and secretary-treasurer of said board.

History.—s. 16, ch. 59-191; s. 27, ch. 61-514; s. 3, ch. 76-168.

1 Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

cf.—s. 215.37 Examining and licensing boards to be financed from fees collected; moneys deposited in trust funds; 10 percent to general revenue fund; appropriation.

1491.17 Exemptions.—This act shall not apply to public health officers, public health engineers, entomologists, industrial hygiene engineers, public
health nurses, secretarial employees, or insect or
pest control operators.
History.—s. 17, ch. 59-191; s. 3, ch. 76-168.
Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

491.18 Reciprocity.—Agreements for reciprocity with states having a registered sanitarians' act and having educational requirements not less than those required by this act may be entered into by the board at its discretion and under such rules and regulations as the board may prescribe.
History.—s. 18, ch. 59-191; s. 3, ch. 76-168.
Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.

491.19 Penalty.—Any person violating any of the provisions of this act is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
History.—s. 19, ch. 59-191; s. 444, ch. 51-136; s. 3, ch. 76-168.
Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1978.
CHAPTER 492
FORESTRY PRACTICE ACT

July 1, 1979.

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492.01 General provisions.—

(1) Any person practicing or offering to practice the profession of forestry in this state as a registered forester shall be required to submit evidence that he is qualified so to practice, and may be registered as hereinafter provided; and it is unlawful for any person to practice the profession of forestry in this state as a registered forester unless such person is duly registered, and to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a registered forester, as hereinafter defined, unless such person has been duly registered.

(2) Except as hereinafter specifically authorized, no person shall engage in the practice of professional forestry as defined in s. 492.02(2), or in any manner advise or hold himself out as engaged in such practice, without first having been duly registered.

(3) Notwithstanding subsection (2) or any other provisions of this act, nothing herein shall be construed as preventing or prohibiting any person from managing, or otherwise conducting forestry practices on, lands owned, leased, rented, or held by such person; nor shall anything herein prohibit any regular employee or official of any person, corporation, agency, institution, or other entity from engaging in professional or other forestry practices on lands owned, leased, rented, or held by such person; nor shall anything herein prohibit any graduate of a school of forestry from practicing forestry under supervision as hereinafter authorized, so as to qualify for licensing as provided in s. 492.12.

History.—s. 1, ch. 61-280, s. 1, ch. 74-54; s. 3, ch. 76-168; s. 1, ch. 77-457.

492.02 Definitions.—

(1) The term "registered forester" as used in this act means a person who, by reason of his knowledge of the natural sciences, mathematics, economics, and the principles of forestry, acquired by professional training or practical experience, is qualified to engage in forestry practices as herein defined, and has been duly registered.

(2) The terms "professional forestry" or "practice of forestry" shall mean any professional service relating to forestry, such as consultation, investigation, appraisal and evaluation, development of forest management plans or responsible supervision of forest management, forest production, silviculture, forest utilization, forest economics, or other forestry activities in connection with any public or private lands.

(3) The term "board" as used in this act means the State Board of Registration for Foresters.

(4) The term "responsible charge" as used in this act means the direction of professional foresters' services in evaluation, investigation, or research, requiring initiative, technical knowledge, professional skill, and independent judgment in the practice of forestry.

History.—s. 2, ch. 61-260; s. 2, ch. 74-24; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 1, ch. 77-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

492.03 State Board of Registration for Foresters; appointment of members; terms.—A State Board of Registration for Foresters is hereby created within the Division of Professions of the Department of Professional and Occupational Regulation whose duty it is to administer the provisions of this act. The board shall consist of five foresters who shall be appointed by the Governor. Nominees for appointment to the board may be recommended to the Governor by the offices of the Florida Chapter of the Society of American Foresters, which nominees shall be at least three in number for each position, and who shall have the qualifications required by s. 492.04, and the Governor may make appointments from the persons so nominated. Every member of the board shall be commissioned by the Governor and before beginning his term of office shall file with the Department of State his written oath or affirmation for the faithful discharge of his duties. The five members of the board shall be appointed for terms as follows: one for 1 year, one for 2 years, one for 3 years, and two for 4 years. On the expiration of the term of any member of the board the Governor shall, in the manner herein provided, appoint for a term of 4 years a registered forester having the qualifications required by s. 492.04 to take the place of the member whose term on said board is expiring. Each member shall hold office until the expiration of the term for which such member has been appointed or until his successor shall have been duly appointed and quali-
fied. Appointments to fill vacancies caused by death or resignation shall be for the unexpired term only.

History.—s. 5, ch. 61-260, ss. 10, 30, 56, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

492.04 Qualifications of members of the board.—Each member of the board shall be a citizen of the United States and a citizen and resident of this state, and shall have been engaged in the practice of forestry as herein defined, or in the teaching of forestry, for at least 10 years, during at least 5 years of which he shall have been in responsible charge of such activity, and after the initial appointment to the board shall be registered under the provisions of this act.

History.—s. 3, ch. 76-168, ss. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

492.05 Compensation and expenses of board members.—The members of the board shall receive no compensation for their services but shall be entitled to any per diem or travel expenses as provided by s. 112.061.

History.—s. 5, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

492.06 Removal of members of the board.—The Governor may remove any member of the board as prescribed under s. 7 of Art. IV of the State Constitution.

History.—s. 6, ch. 61-260, s. 6, ch. 69-216; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

492.07 Organization and meetings of the board.—The board shall have its headquarters in Tallahassee, Leon County. It shall hold at least two regular meetings each year. The two regular meetings shall be held in Tallahassee, Leon County. Special meetings of the board shall be held at such time and place within the state as the bylaws of the board shall provide. The board shall elect or appoint annually the following officers: a chairman and a vice chairman from the board, and a secretary who need not be a member of the board. A quorum of the board shall consist of three members.

History.—s. 7, ch. 61-260, s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

492.08 General powers of the board.—The board shall have the power to make all bylaws and rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it. The board shall adopt and have an official seal. In carrying into effect the provisions of this act, the board may, under the hand of its chairman and the seal of the board, subpoena witnesses and compel their attendance and may also require them to produce books, papers, documents, etc., in a case involving the revocation or suspension of registration. Any member of the board may administer oaths or affirmations to witnesses.

History.—s. 6, ch. 61-260, s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

492.09 Receipts and disbursements.—(1) The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same to the State Treasurer, who shall keep such moneys in a separate fund to be known as the Registered Foresters Licensing Fund. Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only by warrant of the Comptroller upon the Treasurer, upon itemized vouchers, approved by the chairman and attested by the secretary of the board. The Comptroller is hereby authorized to retain and withdraw out of the funds collected hereunder 10 percent of the gross amount collected, as a service charge. The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board and shall be paid out of the Registered Foresters Licensing Fund. The board is authorized to negotiate with the director of the Division of Forestry of the Department of Agriculture and Consumer Services to act as secretary of the board and furnish such clerical assistance as is needed to carry out the duties of the board. The board is further authorized to reimburse the department for such clerical services in accordance with procedures prescribed in this section.

(2) The board may employ counsel and clerical or other assistants as are necessary for the proper performance of its work and may make expenditures of this fund for any purpose which, in the opinion of the board, is reasonably necessary for the proper performance of its duties under this act. Under no circumstances shall the total amount of warrants issued by the comptroller in payment of the expenses and compensation provided for in this act exceed the amount in the hands of the State Treasurer known as the Registered Foresters Licensing Fund, and such appropriations as may be made by the Legislature.

History.—s. 10, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

492.10 Records and reports.—The board shall keep a record of its proceedings and a register of all applications for registration and of any action taken thereon. The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced. Annually, as of December 31, the board shall submit to the governor a report of its transactions of the preceding year, and shall also transmit to him a complete statement of the receipts and expenditures of the board, attested by its chairman and secretary.

History.—s. 10, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

492.11 Roster of registered foresters.—A roster of the names and places of business of all registered foresters qualified hereunder shall be prepared annually by the secretary of the board. Copies of this roster shall be placed on file with the Department of Agriculture and Consumer Services, which shall distribute copies to every county in the state, and shall charge the cost to the registrants.
by oath and satisfactory to the board that he:

1492.12 General requirements for registration.

(1) Any graduate with a bachelor's, master's or doctor's degree from a school or college of forestry accredited by the National Society of American Foresters and who in addition to such education, shall have a specific record of two years or more of active practice of forestry work, indicating that the applicant is qualified to be placed in responsible charge of such work, and who is of good moral character and integrity, shall be eligible.

(2) Any person who is not a graduate of a school or college of forestry accredited by the National Society of American Foresters shall be eligible to take a written or oral examination or both to determine his qualifications for registration as a registered forester provided he submits to the board evidence verified by oath and satisfactory to the board that he:

(a) Is 18 years of age or older;
(b) Is of good moral character and integrity;
(c) Has been employed or engaged in the practice of forestry for at least 7 years and during that time has been in responsible charge of forestry work for at least 2 years.

Any applicant who shall pass such written or oral examination, or both, in a manner satisfactory to the board shall be eligible for registration as a registered forester.

(3) Any person, who, on the effective date of this act, has been engaged in the active practice of forestry, as defined in s. 492.02, for at least 7 years, with no substitution of education for active practice, and who is of good moral character and integrity, shall be eligible for registration as a registered forester without reference to the requirements set forth in subsections (1) and (2), provided that he file application for registration with the board within 2 years from the effective date of this act, or men in military service within 1 year after release.

(4) In considering the qualifications of applicants under subsections (1) and (2), responsible charge of forestry teaching in a department, school, or college of forestry may be regarded as responsible charge of forestry work. The satisfactory completion of each year of an approved course in forestry in a ranger school or college of forestry shall be considered the equivalent of 1 year of active practice.

1492.13 Application and registration fees.

Applications for registration shall be made on forms prescribed and furnished by the board; shall contain statements made under oath, showing among other things, the applicant's education and a detailed summary of his technical work, and shall contain not less than five references, who possess professional qualifications necessary for such membership, and who have personal or professional knowledge of his forestry experience. The application fee for a certificate of registration as a registered forester shall be $5, which shall accompany the application. An additional fee of $5 shall be paid upon issuance of the certificate of registration. Should the applicant fail or refuse to remit the certificate fee within 30 days after being notified in the usual manner that the applicant has successfully qualified, he shall forfeit the right to have the certificate so issued and said applicant may be required to again submit an original application fee therefor. Should the board deny the issuance of a certificate of registration to any applicant, the initial application fee deposited by the applicant shall be retained by the board.

1492.14 Examinations.

Examinations shall be held at such time and place as the board shall determine. The method of procedure for examinations shall be prescribed by the board and shall test the applicant's knowledge of natural sciences, mathematics, economics and principles of forestry, and his ability to conduct forestry practices as herein defined. A candidate failing an examination may apply for reexamination at the expiration of 6 months and will be reexamined upon payment of an additional fee of $5.

1492.15 Certificate.

The board shall issue a certificate of registration upon payment of registration fee as provided for in this act to any applicant who has satisfactorily met all the requirements of this act. The certificate shall authorize the practice of forestry. Certificates of registration shall show the full name of the registrant, shall have a registration number, and shall be signed by the chairman and the secretary of the board under seal of the board. The issuance of a certificate of registration by the board shall be evidence that the person named therein is entitled to all rights and privileges of a registered forester, while the said certificate remains unrevoked or unexpired. Plans, maps, specifications, reports, and other instruments issued by a registrant shall be endorsed with his name and registration number.

1492.16 Expiration and renewals.

All certificates of registration shall expire on December 31 following their issuance or renewal and shall become invalid on that date unless renewed. The board shall, each year, fix the annual renewal fee for certificates of registration, which fee shall not exceed the sum of $25. Renewal of certificates of registration for the following year may be effected at any time during the month of December of the year in which such certificate has been issued by the payment of the renewal fee so fixed by the board. Such certificates may be later renewed by the payment of an additional fee of 50 cents for each month, or fraction thereof, that payment of the fixed renewal fee is delayed beyond the month of December. The board, in its
 discretion, may make an exception in meritorious cases.

1492.17 Reciprocity.—A person not a resident and having no established place of business in Florida, or who has recently become a resident thereof, may use the title of registered forester provided:

1. Such person is legally licensed as a registered forester in his own state or county, and has submitted evidence to the board that he is so licensed.

2. The state or county in which he is so licensed observes these same rules of reciprocity in regard to persons licensed under the provisions of this act.

3. Requirements for registration in his own state or county are comparable to those set forth in this act and acceptable to the board.

History.—s. 17, ch. 61-260; s. 3, ch. 76-168, as amended by s. 1, ch. 77-457.

1492.18 Revocations and reissuance of certificates.—

1. The board shall have the power after notice and hearing to revoke, or to suspend for such period less than 1 year as the board may determine, the certificate of registration of any registrant who is found guilty of violating the code of ethics adopted by the board, gross negligence, incompetency, or professional misconduct in the practice of forestry.

2. The board is empowered to designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency, or professional misconduct in connection with any forestry practices against any registrant as may come to its attention. Any person preferring such charges against any registrant shall submit them in writing and under oath to the secretary of the board. All charges, unless dismissed by the board as unfounded and trivial, shall be heard by the board within 3 months, where practicable, after the date on which they have been preferred, and the board shall dispose of them as speedily as is feasible. The time and place for said hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing shall be personally served on, or mailed by registered or certified mail to the last known address of such registrant, at least 30 days before the date fixed for the hearing. At any hearing, the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him, and to produce witnesses and evidence in his own defense. If, after such hearing, a majority of the board present votes in favor of finding the accused guilty, the board shall revoke or suspend the certificate of registration of such registered forester.

3. The board, upon petition being filed by the applicant for restoration and hearing being held thereon, may reissue a certificate of registration to any person whose certificate has been revoked, or may restore the certificate of any person whose certificate has been suspended, by vote of three or more members of the board who favor such reissuance or restoration. A new certificate of registration, to replace any certificate revoked or suspended, may be issued subject to the rules of the board, and a charge of $5 made for such reissuance. A new certificate, to replace any certificate lost, destroyed, or mutilated, may be issued, subject to the rules of the board, and a charge of $1 made for such reissuance.

History.—s. 18, ch. 61-260; s. 3, ch. 76-168; s. 1, ch. 77-457.

1492.19 Violations.—It is unlawful for any person to practice or offer to practice the profession of forestry as a registered forester in this state, without being registered in accordance with the provisions of this act; or to present or attempt to use as his own the certificate of another; or to give any false or forged evidence of any kind to the board or any member thereof in obtaining a certificate of registration; or to use or attempt to use in any manner an expired, revoked, or suspended certificate of registration; or to endorse any plan, specification, estimate, map or other instrument as a registered forester unless he shall have actually prepared such plan, specification, estimate, map or other instrument, or shall have been in actual responsible charge of the preparation thereof, or to violate any other provisions of this act. The board, or such person or persons as may be designated by the board to act in its stead, is empowered to prefer charges for any of the violations of this title in any court of any county of this state having jurisdiction. Nothing contained in this act shall be construed as preventing any landowner, lessee, or owner of any timber rights, whether as an individual, firm, partnership, or corporation from managing his own timberlands, woodlands, or forest, or from operating the removal of any products therefrom, in any lawful manner desired. It shall be the duty of all duly constituted officers of the law of this state, or any political subdivision thereof, to enforce the provisions of this act to prosecute any persons, firms, partnerships, or corporations violating the same, by using the title "Registered Forester" without being duly registered. The Department of Legal Affairs shall act as legal advisor of the board and render such legal assistance as may be necessary in carrying out the provisions of this act. The board may, at its discretion, employ such other legal assistance as it may deem necessary.

History.—s. 19, ch. 61-260; s. 11, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

1492.20 Penalties.—Any person, firm, partnership or corporation violating any of the provisions of this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 20, ch. 61-260; s. 145, ch. 71-166; s. 3, ch. 76-168, s. 1, ch. 77-457.
CHAPTER 493
INVESTIGATIVE AGENCIES; DECEPTION DETECTORS

PART I PRIVATE INVESTIGATIVE AGENCIES, PATROL AGENCIES, ETC.
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PART II REGULATION OF DETECTION OF DECEPTION EXAMINERS
( ss. 493.40-493.56 )

PART I
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PATROL AGENCIES, ETC.

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493.01 Definitions, part I.—As used in this act:
(1) "Private investigative agency" means and in-
cludes any person, firm, company, partnership or
corporation, engaged in the business of furnish-
ing for hire private investigations and which employs
one or more full-time or part-time private investiga-
tors.
(2) "Watchman," "guard," or "patrol agency"
arbitration; or in the trial of civil or criminal cases and the preparation therefor;

(k) The conducting of studies or surveys to determine methods and means of providing security for the person requesting the studies or surveys;

(l) The giving of detection of deception examinations;

(m) Service of court process for consideration by persons other than employees of federal, state, county, or municipal police agencies.

(7) "Watchman," "guard," or "patrolman" means and includes persons who directly supervise others who, or who themselves, separately or collectively, guard persons or property or attempt to prevent theft or unlawful taking of goods, wares and merchandise, or attempt to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents, papers and articles of value, or to procure the return thereof, or who perform the services of such watchman, guard or patrolman, or other person for any of said purposes, but exempting armored car services when such armored car services are regulated in any manner by the Florida Public Service Commission.

(8) Licenses means and includes any person, firm, company, partnership or corporation licensed under this chapter.

(9) The personal pronoun "he" implies the impersonal pronoun "it." 

(10) Department means the Department of State.

Reference: "Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

493.03 Application for license.—

(1) Each person, partner, or, in the case of corporations, each corporate officer, must qualify separately for a license under this part and shall file with the department a written application accompanied by a fee of $25 to cover costs, except that an applicant for a Class "F" or a Class "G" license shall not be required to pay the $25 application fee. The fee shall not be rebatable. The written application shall be in accordance with the following provisions:

(a) If the applicant is an individual, the application shall be signed and verified by the individual.

(b) If the applicant is a firm or partnership, a separate application shall be signed and verified by each individual composing or intending to compose, in the immediate future, such firm or partnership.

(c) If the applicant is a corporation, a separate application shall be signed and verified by each officer (not including assistant secretaries or assistant treasurers) thereof.

(d) The application shall contain the following information concerning the individual signing the same:

1. Full name and title of position held with applicant;

2. Age, date and place of birth;

3. The present residence address and the residence addresses within the 5 years immediately preceding the submission of the application;

4. Occupations held presently and within the five years immediately preceding the submission of the application;

5. A statement that he is 18 years of age or older;

6. The address of the principal place in which the business is to be conducted;

7. The address of all branch offices within the state;

8. The name under which the business is to be conducted;

9. The names and addresses of all partners or officers and directors, as the case may be;

10. A full set of fingerprints and a photograph of the signatory taken within 2 years immediately preceding the submission of the application;

11. A statement of the experience of the signatory which he believes would qualify him, his firm or his corporation for a license under this chapter;

12. A statement of any or all arrests of the signatory; and

13. Such further facts as may be required by the department to show that the person signing the application is competent, honest, truthful, trustworthy, of good character and bears a reputation for fair dealing.

(2) The provisions of this section shall not apply to any full-time police officer, full-time deputy sheriff, part-time police officer, part-time deputy sheriff, auxiliary police officer, or auxiliary deputy sheriff who is duly certified by the Police Standards and
Training Commission when he is performing duties approved by his superiors.

History.—s. 3, ch. 63-340; s. 3, ch. 65-390; ss. 10, 35, ch. 69-106; s. 2, ch. 75-230; s. 3, ch. 76-168; s. 3, ch. 76-170; s. 1, ch. 77-116.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

1493.04 License requirements.—
(1) Every corporation applying for a license hereunder must be organized, or authorized to do business, under the laws of this state and shall have the capacity to make valid contracts and to sue and be sued in this state. Each person, each partner, the president of a corporation, and the officer or manager of the corporation who actively directs the business of the corporation, shall have had at least 3 years' experience performing the type of service permitted under the license applied for or the equivalent thereof in related fields, except that this requirement does not apply to applicants for a Class "F" or a Class "G" license. One year of such experience shall be within this state.

(2) Every person shall, before being employed as a watchman, guard, or patrolman, as defined herein, by any person, firm, company, partnership, or corporation, apply to the department for a Class "F" license. An unarmed watchman, guard, or patrolman may be employed by any person, firm, company, partnership, or corporation before such application is approved. If the department denies, suspends or revokes a license after issuance, the employment of such person shall be terminated immediately. Each person, firm, company, partnership, or corporation shall, upon the employment or termination of employment of a watchman, guard, or patrolman, report such employment or termination immediately to the department. During the period of employment of such person, the license shall be within this state.

(3) The provisions of this section shall not apply to any full-time police officer, full-time deputy sheriff, part-time police officer, part-time deputy sheriff, auxiliary police officer, or auxiliary deputy sheriff who is duly certified by the Police Standards and Training Commission when he is performing duties approved by his superiors.

History.—s. 4, ch. 63-340; s. 3, ch. 65-390; ss. 10, 35, ch. 69-106; s. 2, ch. 75-230; s. 3, ch. 76-168; s. 3, ch. 76-170; s. 1, ch. 77-116.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

1493.06 License and other fees.—
(1) The license fees applicable to the seven types of licenses provided for under this part are:
(a) Class A. Private investigative agency: $100.
(b) Class B. Watchman, guard, or patrolman agency: $100.
(c) Class C. Private detective: $50.
(d) Class D. Watchman, guard, or patrolman contractor: $25.
(e) Class E. Branch office: $25.
(f) Class F. Unarmed watchman, guard, or patrolman employee: $10.
(g) Class G. Statewide gun permit: $25. Issuance of this permit shall not authorize the possession of a concealed weapon.

(2) The fees set forth in this section shall be paid by certified check or money order or, at the discretion of the department, by company check at the time the license is issued, except that the applicant for a Class "F" or Class "G" license shall pay the license fee at the time the application is made. Once a license is issued, if it is subsequently revoked, the license fee shall not be returned to the licensee. The holders of all types of licenses may furnish only the services described under the definition for that type of license contained in s. 493.01.

(3) The department may charge the following fees:
(a) Replacement of a Class "F" or Class "G" laminated card: $5.
(b) Transfer of Class "G" license: $10.

History.—s. 6, ch. 63-340; s. 5, ch. 65-390; ss. 10, 35, ch. 69-106; s. 2, ch. 75-230; s. 3, ch. 76-168; s. 4, ch. 76-170.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

1493.07 Investigation of applicants by Department of State.—
(1) Prior to the issuance of licenses under this part, the department shall make individual investigations of the general fitness and suitability, including the mental and physical fitness, of applicants for licenses. The investigations shall include:
(a) A thorough background investigation of the individual's general character and reputation for honesty, truthfulness, integrity, moral fitness, and fair dealing.
(b) An examination of fingerprint records and police records.
(c) Such other investigation of individuals as the department may deem necessary.

(2) Prior to the issuance of permits under s. 493.21 to armed watchmen, guards, or patrolmen, the department shall make an additional investigation of applicants, which shall include:
(a) Fingerprint records.
(b) Police records.
(c) General mental and physical fitness to carry a weapon or firearm.

History.—s. 7, ch. 63-340; ss. 10, 35, ch. 69-106; s. 3, ch. 75-230; s. 3, ch. 76-168; s. 5, ch. 76-170.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.
1493.08 Issuance of license.—
(1) When the department shall be satisfied of the good character, competency and integrity of the applicant, or, if the applicant be a firm or partnership, the individual members thereof, or, if the applicant be a corporation, the officers thereof, it shall inform the applicant of its findings and that license shall be issued upon the applicant's posting a licensee's bond as provided for in s. 493.09. Upon the posting of such licensee's bond, the department shall issue and deliver to such applicant a license to conduct the type of business applied for at the premises stated in the application. Such license shall not be transferable and shall be revoked or canceled only by the department.
(2) Grounds for denial of license shall be:
(a) Conviction of a felony in this or any other state where civil rights have not been restored;
(b) Conviction of a crime involving moral turpitude or dishonest dealings;
(c) Has not reached his 18th birthday;
(d) Failure to meet the experience qualifications required under the provisions of this part;
(e) Failure to meet character qualifications;
(f) Falsifying application for license;
(g) Conducting business without benefit of proper license; and
(h) Failure to meet any qualification or requirement prescribed in this part, or for any cause which, if the applicant had already been licensed hereunder, would be grounds for revocation of such license.

1493.091 Supervision of agencies.—Each agency must be under the direct supervision of the owner or corporate officer upon whose qualifications the agency is licensed.

1493.10 License; contents; posting.—
(1) All licenses issued pursuant to this part shall be in a form prescribed by the department. The license shall specify the name under which the applicant is to operate, the address of the principal place of business, the expiration date, the full names and titles of the persons who submitted application forms, the number of the license, and any other information the department deems necessary. All licenses, except Class "F" and Class "G" licenses, expire at midnight on June 30 of each year. Class "F" and Class "G" licenses expire each year at midnight on the date of birth of the licensee. The department may prorate license fees.
(2) The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee in this state.

1493.09 Licensee's bond and insurance.—
(1) The licensee's bond referred to in s. 493.08 shall be a surety bond executed by the applicant and two or more sureties, or by a surety company authorized to do business in this state, payable to the Governor of this state in the sum of $5,000 conditioned upon the faithful and honest conduct and performance by the licensee of the business so licensed. If any person shall be aggrieved by the misconduct of any such licensed agency, such person may maintain an action in his own name upon the bond of said agency, in any court having jurisdiction of the amount claimed. Any remedies given by this section shall not be exclusive of any other remedy which would otherwise exist. No bond shall be required for those persons who receive a Class "F" or Class "G" license.
(2) No license shall be issued unless the applicant files with the department a certificate of insurance evidencing comprehensive general liability coverage for death, bodily injury, and personal injury. Coverage shall include false arrest, detention or imprisonment, malicious prosecution, libel, slander, defamation of character, and violation of the right of privacy in the amount of $100,000 per person and $300,000 per occurrence and property damage in the amount of $100,000 per occurrence. The certificate shall provide that the insurance shall not be modified or canceled unless 30 days' prior written notice is given to the department. However, this subsection shall not apply to those who receive a Class "E", Class "F", or Class "G" license.

1493.09 License; contents; posting.—
(1) All licenses issued pursuant to this part shall be in a form prescribed by the department. The license shall specify the name under which the applicant is to operate, the address of the principal place of business, the expiration date, the full names and titles of the persons who submitted application forms, the number of the license, and any other information the department deems necessary. All licenses, except Class "F" and Class "G" licenses, expire at midnight on June 30 of each year. Class "F" and Class "G" licenses expire each year at midnight on the date of birth of the licensee. The department may prorate license fees.
(2) The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee in this state.
cept as licensed. A licensee desiring to change its licensed name at any time except upon renewal of license shall notify the department and pay a fee of $10 for each authorized change of name; and upon returning the license to the department with a certificate from his surety on the bond provided for in s. 493.09 to the effect that said bond covers the licensee's new name, the newly authorized name shall then be entered upon the license and same returned to the licensee.

(4) It shall be the duty of every licensee to furnish all of its partners and officers, the case may be, and all persons, private investigators or watchmen, guards and patrolmen, to furnish himself in the case of a private detective or watchman, guard or patrolman contractor, an identification card. Such card shall be in a form and design as may be approved by the Department of State, but shall specify at least the name of the holder of the card, the name and number of the licensee, and be signed by a representative of the licensee and by the holder of the card. Such card shall be in the possession of each partner, officer, or employee while on duty. Upon suspension or revocation of a license, it shall be the duty of each partner, officer, or employee to return the card to his employer.

A Class "G" license shall remain in the custody and control of the employee. Upon termination of employment, the employer shall immediately notify the department on the form provided.

(6) Each person to whom a license and card have been issued shall be responsible for the safekeeping of same and shall not loan, or let or allow any other person to use or display, said license or card.

History.—s. 10, ch. 63-340; s. 7, ch. 65-380; s. 3, ch. 67-522; ss. 10, 35, ch. 69-106; s. 3, ch. 72-229; s. 3, ch. 76-168; s. 7, ch. 78-170.

Note.—Repealed by s. 3, ch. 76-168.

'493.12' Renewal of license.—

(1) A license granted under the provisions of this part may be renewed by the department.

(2) No less than 90 days prior to the expiration date of the license, the department shall mail to each licensee a written notice of the expiration and renewal form prescribed by the department.

(3) A licensee shall renew his license prior to expiration by filing with the department, at least 45 days prior to expiration, the renewal form accompanied by:

(a) Payment of the fee prescribed in s. 493.06 except that the Class "G" renewal fee shall be $15.

(b) Posting of the surety bond required in s. 493.09.

(4) A licensee who fails to renew his license before it expires may renew his license by fulfilling the requirements of subsection (3) and paying a late fee equal to the amount of the license fee.

(5) No license shall be renewed 6 months or more after the expiration date.

(6) No person, firm, company, partnership, corporation shall carry on any business regulated by this part during any period which may exist between the date of expiration and the date of renewal of a license.

(7) Before a Class "G" license is renewed, the licensee shall fulfill health and training require-
ments which the department shall promulgate by rule.

History.—s. 12, ch. 63-340; s. 8, ch. 65-390; ss. 10, 20, ch. 69-106; s. 3, ch. 76-168; s. 8, ch. 79-170; s. 1, ch. 77-174.

*Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

493.13 Change of location of licensee.—In the event the licensee desires to change the location of any place of business indicated in his application on file with the Department of State, he shall notify the department. The Department of State shall send to him suitable forms designed by the Department of State, the purpose of which shall be to record in the office of the department the fact that there has been a change by way of substitution of the licensee's place or places of business. Upon completion of such form the licensee shall return it to the Department of State, together with a fee of $10 for each changed place or places of business. Upon completion of such form the licensee shall return it to the Department of State, together with a fee of $10 for each changed location, and a certificate from his surety on the bond mentioned in s. 493.09, to the effect that said bond covers the licensee's business at the changed location. The department shall thereupon send to the licensee a certificate of registration of each changed location. Said certificate shall be in a form designed by the Department of State, but it shall at least specify the name under which the licensee operates, its license number and the address of the location to which the certificate of registration applies. The holder of a Class "F" or Class "G" license shall not be required to pay the $10 fee for each change of location.

History.—s. 13, ch. 63-340; ss. 10, 35, ch. 69-106; s. 4, ch. 75-230; s. 2, ch. 76-158.

*Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

493.14 Power of department to deny, suspend or revoke license.—

(1) The department may deny, refuse to renew, or may suspend or may revoke a license for any one or more of the following grounds:

(a) Fraud or willful misrepresentation in application for, or in obtaining a license;

(b) Willfully and knowingly violating any of the provisions of this chapter by the licensee or any of his employees;

(c) If the licensee or anyone in his employ has been adjudged guilty of the commission of a crime involving moral turpitude;

(d) A false statement by the licensee that any person is or has been in his employ;

(e) If the licensee or any of his or its employees is found guilty of willful betrayal of a professional secret;

(f) If the licensee or any of his employees is incompetent, or is guilty of conduct against the interest of the general public, or has been convicted of a felony in this, or any other state, and has not had his civil rights restored;

(g) Failure of the licensee to maintain in full force and effect the surety bond referred to in s. 493.09;

(h) Upon the disqualification or insolvency of the sureties of the bond referred to in s. 493.09, unless such licensee files a new bond with sufficient sureties within 30 days after notice from the Department of Insurance of this state or of the surety company's home state;

(i) If the licensee impersonated, permitted, or aided and abetted an employee to impersonate, a law enforcement officer or any employee of this state, United States, or any political subdivision thereof;

(j) Willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(k) Committed assault, battery, or kidnapping; or used force or violence on any person except in self-defense or in the defense of a client;

(l) Knowingly violated or advised, encouraged or assisted the violation of any court order or injunction in the course of business as a licensee;

(m) Acted as a runner or a capper for any attorney;

(n) Committed any act which is a ground for a denial of an application for license under this chapter and these acts.

If committed by the applicant prior to issuance of license, the foregoing shall be grounds for the refusal by the department to issue such license.

(2) Upon revocation or suspension of license, the licensee shall forthwith return the license which was suspended.

(3) The Department of State shall hold as confidential any information of a personal nature or that relating to the conduct of the trade or profession.

History.—s. 14, ch. 63-340; ss. 10, 35, ch. 69-106; s. 1, ch. 76-158.

*Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

493.15 Cancellation of license.—In the event the licensee desires to cancel the license, he shall notify the Department of State and the department shall supply him with proper forms as designed by the Department of State to effectuate the cancellation of said license. Upon cancellation of said license, the licensee shall forthwith return the Department of State the license so canceled.

History.—s. 15, ch. 63-340; ss. 10, 35, ch. 69-106; s. 3, ch. 76-158.

*Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

493.16 Denial of application; hearing; appeal.—

(1) The department shall, upon denying an application for a license or before revoking or suspending any license, and at least 15 days prior to the date set for any hearing, and upon due notice to the complainant or objector, notify in writing the applicant or the holder of such license, of any grounds for denial or charge made and shall afford said applicant, or licensee an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the applicant or licensee, or by mailing same by registered or certified mail to the last known business address of such applicant or licensee. The hearing on such charges shall be, at such time and place as the department shall prescribe, providing that it does not work a hardship on the applicant or defendant, and shall be conducted by such officer or person in the department as the department may designate, who shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his deposition to be
taken with the same fees and mileage as prescribed by law in courts in this state in civil cases. Such officer or person in the department designated to take such testimony shall be bound by common law and statutory rules of evidence and by technical or formal rules of procedure that apply to the circuit courts of the state. In the event that the department shall deny the application for, or revoke or suspend any such license, its determination shall be in writing and officially signed. The original of such determination, when so signed, shall be filed in the office of the department and copies thereof shall be mailed to the applicant or licensee and to the complainant within 2 days after the filing thereof as herein prescribed.

(2) After notice of revocation, or suspension, or denial of application has been mailed, by registered or certified mail, to the applicant, or licensee, he shall have the time provided by the Florida Appellate Rules within which to appeal the revocation, suspension, or denial of the application to the circuit court of the judicial circuit within which he resides, or is domiciled.

History.—s. 16, ch. 63-340; s. 10, ch. 65-390; s. 10, 35, ch. 69-106; s. 1, ch. 69-267; s. 3, ch. 76-168.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

'493.17 Death of licensee; carrying on of business.—

(1) Upon the death of an individual or individuals, of whose qualification a license under this part has been obtained, the business with which the decedent was connected may be carried on for a period of 90 days by the following:

(a) In the case of an individual licensee the surviving spouse, or, if there be none, the executor, or administrator of the estate of the decedent.

(b) In case of a partnership, the surviving partners.

(c) In case of an officer of a firm, company, association, organization or corporation, the other officers thereof.

(2) Upon the authorization of the Department of State the business may be carried on for a further period of time when necessary to complete any investigation or contract, or assist in any litigation pending at the death of the decedent.

(3) Nothing in this section shall be construed to restrict the sale of a business licensed pursuant to this part; provided, however, the vendee qualifies for a license under the provisions of this part.

History.—s. 17, ch. 63-340; s. 10, ch. 65-390; s. 3, ch. 76-168.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

'493.18 Trust fund.—

(1) All funds derived from renewal of Class "G" license fees paid under this part shall be deposited into a trust fund to be known as the Private Investigative Agency Licensing Law Trust Fund, to be used by the Division of Licensing of the department to employ personnel and pay expenses to carry out the provisions of this chapter.

(2) The unencumbered balance in the trust fund at the beginning of each fiscal year shall not exceed $50,000, and any excess shall be transferred to the General Revenue Fund.

History.—s. 18, ch. 63-340; s. 3, ch. 76-168; s. 9, ch. 76-170.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

'493.19 Divulging information; prohibited; false reports; penalty.—No licensee or any employee of such licensee shall divulge to any person, except as otherwise provided by law, other than to his principal or his employer any information acquired as a result of any investigation, surveillance, or other employment performed by such licensee or employee. Provided, however, that the provisions of this section shall not apply to any employer who is also the holder of a license issued pursuant to this part who has the written consent of the client or principal to divulge any information falling within the terms of this section, and further provided, that the provisions of this section will not apply to the taking of testimony or the receiving of evidence in any judicial proceeding. Any person violating this section or any employee who shall willfully make a false report to his employer concerning his employment or work shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 19, ch. 63-340; s. 1, ch. 67-487; s. 416, ch. 71-136; s. 3, ch. 76-168.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

'493.20 Exclusion of tax.—Payment of the license fee provided for hereunder authorizes the licensee to practice his profession anywhere in Florida without obtaining any additional license, permit, registration, or identification card, except as required by s. 493.21, any municipal or county ordinance or resolution to the contrary notwithstanding. However, all licensees hereunder, except those issued a Class "F" or Class "G" license, shall be required to obtain a city and county occupational license in each city and county where the licensee maintains a physical office.

History.—s. 20, ch. 63-340; s. 4, ch. 75-230; s. 3, ch. 76-168.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

'493.21 Weapons and firearms; training requirements; permit.—

(1) It is hereby specifically provided that nothing in this part shall be construed to authorize any licensee or his employees to carry any weapon or firearm without first complying fully with the requirements of subsection (2) and paragraph 493.06(1)(g).

(2) The department shall issue a Class "G" statewide permit to persons licensed under the provisions of this part to carry a weapon or firearm to be owned and issued by their employers upon:

(a) Satisfactory completion of a thorough background investigation of the individual's police record and general character made by the department, which investigation indicates that the individual is a fit person to carry a weapon or firearm;

(b) The meeting of minimum training criteria for weapons and firearms, not to exceed 10 hours, which shall be promulgated by the department.

(3) No employee shall carry or be furnished a weapon or firearm unless required by his duties; nor shall an employee carry such weapon or firearm except in connection with said duties. The weapon or firearm shall be encased in view at all times when
carried pursuant to this subsection, unless the employee complies with ss. 790.05 and 790.06 as they pertain to concealed weapons or firearms.

No employee shall carry or be furnished a weapon or firearm until he has received a Class "G" statewide permit, or a temporary Class "G" license, to carry such weapon or firearm under the provisions of this section. However, nothing in this act shall abrogate the provisions of paragraph 790.253(n). The statewide permit shall remain in effect only during the period the applicant is employed as a guard.

(b) The department shall issue a Class "G" statewide permit to security personnel upon receiving proof from the employer that the applicant meets the criteria as set forth herein, and said permit shall remain in effect during the period the applicant is employed as a guard immediately to notify the Department of State of the employee's termination of employment, at which time the department shall revoke said permit.

(c) The department may issue a 45-day temporary Class "G" license which may be renewed. This temporary license may be issued only after:

1. Completion of an investigation of the individual's Florida police record by the department, which investigation indicates that the individual is a fit person to carry a weapon or firearm; and

2. The meeting of minimum physical fitness criteria and minimum training criteria for weapons and firearms, not to exceed 10 hours, which criteria shall be promulgated by the department.

(d) The department shall revoke the temporary Class "G" license if it finds that the individual has a police record in another state or is otherwise unfit to carry a firearm.

(e) A licensee who has been issued a Class "G" statewide permit pursuant to this section is exempt from the requirements of ss. 790.05 and 790.06 while carrying out the duties he is licensed to perform under this act, provided he does not carry a concealed weapon or firearm.

(f) The only firearm a Class "G" licensee may carry is a standard police.38 caliber revolver with standard ammunition, unless otherwise approved by the department.

1. The department shall have the power to enforce the provisions of this part irrespective of the place or location in which said violation occurred and upon complaint of any person or on its own initiative to cause to be investigated any violation thereof or to cause to be investigated the business and business methods of any licensee, applicant or employee thereof.

2. In any such investigation caused to be made by the department each such licensee, applicant or employee thereof shall be obliged to submit information as to his business practices or methods. For purposes of enforcing the provisions of this part and in any action, investigation, or proceeding relating to any violation thereof, for the purposes of investigating the character, competence or integrity of any such applicant, licensee or employee thereof, and for purposes of investigating practices and business methods thereof, the department shall have the power to subpoena and bring before it any person in the state and may require the production of any papers it deems necessary and administer oaths and take depositions of any such persons so subpoenaed. Failure or refusal of any person duly subpoenaed to be examined or to answer any legal or pertinent question as to his qualifications or the business methods or business practices of such person under investigation shall be grounds for revocation of license, or refusal to issue such license, as the case may be. The testimony of witnesses in any such proceeding shall be under oath before the department or its agent, and willful false swearing in such proceedings shall be punishable as perjury.

3. The department shall designate an advisory council to be composed of nine members. Said advisory council shall insofar as possible be geographically distributed and representative of the various segments of the profession. The council shall organize, elect a chairman and thereafter meet upon call of the chairman through the department. The council shall counsel and advise with the department and make recommendations relative to the operation and regulation of the industry. Such advisory council members as are appointed by the department shall serve without pay; however, state per diem and travel allowances may be claimed for attendance at officially called meetings of the council as provided by s. 112.061.

4. Department of Legal Affairs; enforcement.—The Department of Legal Affairs shall be attorney for the Department of State in the enforcement of this part and shall conduct any investigations incident to its legal responsibility.

5. Applicability of part I to private investigative agency, etc., when effective.—Any private investigative agency or watchman, guard or patrol agency conducting such business on June 7, 1963, shall receive a license from the secretary of state automatically upon his filing with the secretary of state the application provided for in s. 493.03 and the payment of the fees and procuring of approved bond as provided for in this part by August 1, 1963, as to any private investigative agency or watchman, guard or patrol agency.

6. Enforcement of part I; investigation.—

(1) The department shall have the power to enforce the provisions of this part irrespective of the place or location in which said violation occurred and upon complaint of any person or on its own initiative to cause to be investigated any violation thereof or to cause to be investigated the business and business methods of any licensee, applicant or employee thereof.
493.25 Acts prohibited by licensees or employees acting as reposessors.—Licensees and employees acting as reposessors shall be prohibited from:

1. RECOVERING VEHICLES SOLD UNDER CONDITIONAL SALES AGREEMENT OR CHATTLE MORTGAGE WITHOUT AUTHORIZATION.

—Recovering personal property including personal property registered under the motor vehicle code, which has been sold under a conditional sales agreement or under the terms of a chattel mortgage before authorization has been received from the legal owner of such property or from the mortgagee when such personal property is subject to the terms of a chattel mortgage.

2. SOLICITING RECOVERY OF A VEHICLE OR OTHER PERSONAL PROPERTY AFTER IT HAS BEEN LOCATED.—Soliciting from the legal owner the recovery of specific personal property after such property has been seen or located on public or private property.

3. CHARGING UNINCURRED EXPENSES.—Charging for expenses not actually incurred in connection with the recovery, transportation and storage of personal property.

4. USING PROPERTY FOR PERSONAL BENEFIT.—Using personal property which has been recovered for the personal benefit of a licensee or officer, director, partner, manager or employee of a licensee.

5. SALE OTHER THAN AT PUBLIC AUCTION OR UNDER WRITTEN AUTHORIZATION.—Selling personal property recovered under the provisions of this part while acting as a repossession or finance adjuster except at public auction or with written authorization from the legal owner or the mortgagee thereof.

6. NOTIFICATION TO POLICE OR SHERIFF’S DEPARTMENT.—Failure to notify police or sheriff’s department of the jurisdiction in which the personal property is recovered within 24 hours.

493.26 Requirement of inventory by recoverer of personal property.—If personal effects or other personal property not recovered by a conditional sales agreement or by a chattel mortgage are contained in or on personal property at the time it is recovered, a complete and accurate inventory shall be made of such personal effects or other personal property. The date and time the inventory is made shall be indicated and it shall be signed by the person or persons who recovered the personal property on behalf of the legal owner or mortgagee. The inventory shall be filed in the permanent records of the licensee and shall be made available to representatives of the department upon demand during normal business hours. Falsification or alteration of an inventory shall be grounds for suspension or revocation of license.

493.27 Applicability of part I to repossession, finance adjuster, etc., when effective.—Any repossession, finance adjuster or armored car service, except armored car services regulated in any manner by the Florida Public Service Commission, conducting such business on June 1, 1965, shall receive a license from the secretary of state automatically upon his filing with the secretary the application provided for in s. 493.03 and the payment of the fees and procuring of approved bond as provided for in this part by August 1, 1965.

493.28 Association with government not to be implied.—

1. No licensee shall use any designation or trade name which implies or gives an impression he is associated with any municipal, county, state, or federal government or any agency thereof, nor shall a licensee wear any badge or uniform capable of being associated with or confused with the badge or uniform of any governmental law enforcement organization in the operating area of the licensee.

2. Use of the words “police,” “sheriff,” or “deputy sheriff” and the use of the official seal, or any facsimile thereof, of the state or of any political subdivision of the state is specifically prohibited on badges, cap shields, patches, automobiles, decals, or advertisements.

3. The provisions of this section shall not apply to any full-time police officer, full-time deputy sheriff, part-time police officer, part-time deputy sheriff, auxiliary police officer, or auxiliary deputy sheriff who is duly certified by the Police Standards and Training Commission when he is performing duties approved by his superiors.

493.40 Definitions, part II.—

493.41 Powers and duties of Department of State.

493.42 Application for license.

493.43 License requirements.

493.44 Fees.

493.45 Investigation of applicant by Department of State.

493.46 Licensee’s bond.

493.47 Issuance of license.

493.48 License, contents and posting.

493.49 Reciprocity.

493.50 Renewal of licenses.

493.51 Power of Department of State to deny, suspend, or revoke licenses.

493.52 Denial of application; hearing; appeal.

493.53 Advisory council.

493.54 Violation; penalty.

493.55 Effective date.

493.56 Construction of part II; admissibility of evidence.

493.40 Definitions, part II.—The following terms shall, unless the context otherwise indicates, have the following respective meanings:

1. "Detection of deception examiner” shall
mean, and include any person who uses any device
or instrument which records as minimum standards,
permanently and simultaneously, the examinee’s
cardiovascular (blood pressure and pulse) and respi­
ratory (breathing) patterns, in order to examine indi­
viduals for the purpose of detecting truth or decep­
tion. Such an instrument may record additional
physiological changes pertinent to the detection of
truth or deception.

(2) “Intern” means the study of detection of de­
ception and the administration of detection of de­
ception examinations by a trainee under the per­
supervision and control of an examiner.

(3) “Licensee” means only natural persons.

(4) “Department” means Department of State.

(5) “Polygraph” means an instrument which
combines a continuous permanent recording and
means of measuring and recording at least two of the
physiological reactions to emotions.

(6) “Employee examiner” means a qualified
detection of deception examiner employed wholly
and exclusively by a single employer.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 184, ch. 71-377; a. 3, ch. 76-168.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

493.41 Powers and duties of Department of State.—
(1) The Department of State is hereby vested
with the power, jurisdiction and authority to issue
and revoke licenses to detection of deception examin­
ers. The department shall have the power, jurisdic­
tion and authority to promulgate rules and regula­
tions for its own government and the exercise of its
power examinations by a trainee under the business or,
practice of administering examinations for the pur­
purpose of detecting truth or deception (lie detector ex­
aminations) not in conflict with the Constitution and
laws of the United States or this state and this may
and amend same at its pleasure.

(2) No person shall administer examinations for
the purposes of detecting truth or deception without
first receiving from the Department of State a li­
cense as provided herein.

(3) This part is not applicable to a detection of
deception examiner employed by a municipal, coun­
ty, state or federal agency as long as he can use of
the instrument described in s. 493.40(1) is in the
performance of his official duties.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

493.42 Application for license.—
(1) Every person administering detection of
deception examinations must qualify individually for a
license under this part and shall file with the depart­
ment a written application accompanied by a fee of
$25 to cover costs. The fee shall not be retable.

(2) The written application shall be in ac­
cordance with the following provisions, and the appli­
cation shall be signed and verified by the individual
and shall contain the following information:
(a) Full name and title of position;
(b) Age, date and place of birth;
(c) The present residence address and the residen­
tial address within the 5 years immediately pre­
ceding the submission of the application;
(d) Occupations held presently and within the 5
years immediately preceding the submission of the
application;
(e) A statement that he is 18 years of age or older;
(f) The address of the principal place in which
the business is to be conducted;
(g) Statement of educational qualifications as
provided in s. 493.43;
(h) The name under which the business is to be
conducted;
(i) Statement of formal polygraph training as
provided in s. 493.43;
(j) A full set of fingerprints and a photograph of the
signatory taken within 2 years immediately pre­
ceding the submission of the application;
(k) A statement of the experience of the signato­
ry which he believes would qualify him for a license
under this part;
(l) A statement of any or all arrests of the signa­
tory;
and
(m) Such further facts as may be required by the
department to show that the person signing the appli­
cation is competent, honest, truthful, trustworth­
y, of good character and bears a reputation for fair
dealing.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; r. 1, ch. 77-118;
s. 44, ch. 77-121.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

493.43 License requirements.—An applicant is
qualified to receive a license as a detection of decep­
tion examiner:
(1) Who is at least 18 years of age; and
(2) Who establishes that he is a person of hones­
ty, truthfulness, integrity, moral fitness, and has a
reputation for fair dealing;
(3) Who has not been convicted of a misdemeanor
involving moral turpitude or a felony or has not been
released or discharged under any other than honor­
able conditions from any of the armed forces of the
United States; and
(4) Who has a bachelor’s degree from a full 4-year
university or college recognized as such by the depart­
ment. This requirement may be waived for those
persons who have a high school diploma and 5 years’
experience as an investigator or detective with a mu­
cipal, county, state or federal agency; and
(5) Who has satisfactorily completed a formal
training course of at least 6 weeks’ duration at an
examiner’s school instructing in the use of an instru­
ment as described in s. 493.40(5), which school must
be recognized and approved by the department; and
(6) Who has completed a period of a minimum of
1 year as licensed intern examiner under the super­
vision of a qualified examiner in this state.

History.—s. 1, ch. 67-144; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; r. 1, ch. 77-118;
s. 45, ch. 77-121.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.

112.01 Felons; removal of disqualifications for employ­
ment, exceptions.

493.44 Fees.—The license fees applicable to the
two types of licenses provided under part II of this
chapter are as follows:
(1) Detection of deception examiners—$50.
(2) Detection of deception intern—$10.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.
493.48 License, contents and posting.—
(1) The license issued pursuant to part II of this chapter shall be for a period of 1 year and shall be in such form as may be determined by the Department of State, but shall at least specify the applicant's name, the type and number of the license, the address of the principal place of business and the date on which it will expire.

(2) The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee in this state.

493.49 Reciprocity.—A person who is a detection of deception examiner, licensed under the laws of another state or territory of the United States, may be issued a license by the department, at its discretion, upon payment of the fee as provided under s. 493.44, and the production of satisfactory proof that:
(1) The applicant is at least 18 years of age;
(2) He is of good moral character;
(3) The requirements for the licensing of examiners in such particular state or territory of the United States were, at the date of licensing, substantially equivalent to the requirements then in force in this state;
(4) The applicant had lawfully engaged in the administration of detection of deception examinations under the laws of such state or territory for at least 5 years prior to his application for a license hereunder; and
(5) Such other state or territory grants similar reciprocity to license holders in this state.

493.50 Renewal of licenses.—Licenses granted under part II of this chapter may be renewed by the Department of State in the same manner and under the same provisions provided by s. 493.12.

493.51 Power of Department of State to deny, suspend, or revoke licenses.—The Department of State may deny, refuse to renew or may suspend or may revoke licenses issued under part II of this chapter upon the same grounds as set forth in s. 493.14.

493.52 Denial of application; hearing; appeal.—The procedure set forth in s. 493.16, relative to denial of application, hearing, and appeal, shall be applicable to all licenses issued under part II of this chapter.

493.53 Advisory council.—Advisory council as set forth in s. 493.23(3), shall also be the advisory council for part II of this chapter, provided, however, that an additional member be appointed to the council representing detection of deception examiners.

493.54 Violation; penalty.—Any person who violates any provisions of this part shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

493.55 Effective date.—Any resident of the State of Florida who, as of the date of the passage of this law, is engaged in the occupation, business or profession of detection of deception examiner shall receive a license from the secretary automatically upon filing the application, paying the fee and procuring an approved bond provided for in this part.

493.56 Construction of part II; admissibility of evidence.—This part does not authorize or imply the admissibility into evidence of the results of polygraph examination in judicial proceedings.

Note.—Repealed by s. 3, ch. 76-168, effective July 1, 1980.
TITLE XXXI
REGULATION OF TRADE, COMMERCE, INVESTMENTS AND SOLICITATIONS
CHAPTER 494
MORTGAGE BROKERAGE ACT

494.01 Short title. This act may be cited as "Mortgage Brokerage Act."

494.02 Definition of terms.—In this act unless the context or subject matter otherwise requires:
(1) "Person" means an individual, partnership, corporation, association, and any other group however organized.
(2) "Mortgage loan" means any loan secured by a mortgage on real property or any loan secured by collateral which has a mortgage lien interest in real property.
(3) "Mortgage broker" means any person not exempt under s. 494.03 who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly makes, negotiates, acquires or sells, or offers to make, negotiate, acquire or sell a mortgage loan. This subsection shall not apply to transactions involving the sale or purchase of notes or bonds secured by mortgages which are subject to registration by the department.
(4) "Mortgage solicitor" means any individual not licensed as a mortgage broker, who performs any of the functions set out under subsection (3) and who is employed by a mortgage broker or whose business policies and acts are under the direction, control or management of a mortgage broker.
(5) "Department" means the Department of Banking and Finance.
(6) "Licensee" means a person, whether mortgage broker or mortgage solicitor, under any of the provisions of this act.
(7) "License" means a license issued under the provisions of this act.
(8) "Principal mortgage broker" means an individual, officer of a corporation, or member of a partnership designated as the primary broker in the application.
(9) "Lender" means any person who either lends or invests money in mortgage loans.

494.03 Exempt persons.—This act does not apply to the following:
(1) Banks, trust companies, savings and loan associations, pension trusts, credit unions, insurance companies, small loan companies, federally licensed small business investment companies, or securities dealers registered under the provisions of s. 517.12, servicing corporate clients in the normal course of business.
(2) Any person making or acquiring a mortgage loan with his own funds for his own investment without intent to resell said mortgage loan.
(3) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when such person renders services in the course of his practice as an attorney at law.

494.04 Licensing of mortgage brokers and mortgage solicitors.—
(1) No person shall act as a mortgage broker or mortgage solicitor in this state, or in, out of, or from offices in this state, without a license therefor as provided in this act.
(2) No mortgage broker’s or mortgage solicitor’s
license shall be granted to any person unless he has 
been a bona fide resident of the state for a period of  
at least 6 months immediately preceding the date of  
application for license and is a citizen of the United  
States, or has presented a notarized declaration  
of intention to become a United States citizen.  

(4) Each application for a license or for a renewal  
shall be made in writing, on such forms and  
in such manner and accompanied by such evidence  
in support of such application as prescribed by the  
department. An investigation fee of $50, which shall  
not be subject to refund, shall be paid by each new  
apPLICANT, other than for a branch office. The depart­  
ment shall require such information with regard to  
the applicant as it may deem desirable, with due  
regard to the paramount interests of the public, as to  
the experience, background, honesty, truthfulness,  
integrity, and competency of the applicant as to fi­  
cancial transactions involving primary or subordi­  
nate mortgage financing, and where the applicant is  
A person other than an individual, as to the honesty,  
thoughtfulness, integrity, and competency of any offic­  
or or director of such corporation, association, or  
other group, or the members of such partnership.  
For examination purposes, the department may pre­  
pare a handbook for mortgage brokers and distrib­  
ute same on request to applicants, provided a reason­  
able charge shall be made therefor. Each applicant,  
including designated officers or members as other­  
wise provided in this section, shall file a complete set  
of fingerprints taken by an authorized law enforce­  
m ent officer. Said fingerprints shall be submitted to  
the Department of Criminal Law Enforcement or the  
Federal Bureau of Investigation for state and  
federal processing.  

(5) The license fee for a license year or part  
thereof ending the following August 31 shall be the  
sum of $75 for the mortgage broker and $40 for a  
mortgage solicitor. All fees or charges under this  
section shall be deposited in the State Treasury to  
be appropriated to the department to be used in ad­  
ministering this act.  

(6) If the licensee is a person other than an indi­  
vidual, the license issued to it entitles one officer or  
member thereof, on behalf of the corporation, part­  
nership, association, or other group, to engage in the  
business of mortgage broker, and such officer or  
member other than the officer so designated, through whom it engages in  
the business of mortgage broker, the annual fee shall  
be $40 in addition to the fee paid for the first license.  

(7) Upon the filing of such application, and the  
payment of said fees, the department shall, upon  
determination of proper qualifications issue a li­  
cense to the applicant to act as a mortgage broker or  
mortgage solicitor under and in accordance with the  
provisions of this act for a period which shall expire  
the last day of August next following the date of its  
issuance. Such license shall not be transferable or  
assignable.  

(8) When a mortgage broker’s license is issued to  
a person other than an individual, if it designates any of  
its officers or members other than the officer or  
member designated by it to act on behalf of the cor­  
poration, partnership, association or other group, as  
a mortgage broker, it may procure an additional li­  
cense to so employ each of such additional officers or  
members. Each additional officer or member so li­  
censed shall be licensed only to act as a mortgage  
broker for and on behalf of the corporation, partner­  
ship, association or other group.  

(9) The licenses of both mortgage broker and  
mortgage solicitor shall be prominently displayed in  
the office of the mortgage broker. The mortgage so­  
licitor’s license shall remain in the possession of the  
licensed mortgage broker employer until canceled or  
until the mortgage solicitor leaves the employ of the  
mortgage broker.  

(10) Immediately upon the mortgage solicitor’s  
withdrawal from the employ of the mortgage broker,  
the mortgage broker shall return the mortgage solic­  
itator’s license to the department for cancellation.  

(11) Every licensed mortgage broker shall have  
and maintain a principal place of business in the  
state for the transaction of business. The license  
shall specify the address of said principal place of  
business and shall be conspicuously displayed there­  
in. In the event the mortgage broker shall maintain  
a branch office or offices, the department shall, upon  
application and the payment of a fee of $75, issue a  
branch office license specifying thereon the address  
of such office, which license shall be conspicuously  
displayed therein. Each mortgage brokerage office  
or branch thereof shall be operated under the full  
charge, control and supervision of a designated  
mortgage broker employed at such office or branch  
on a regular and full-time basis to supervise and  
perform the rendition of mortgage brokerage ser­  
ices. No mortgage broker may serve as the licensed  
person in charge of more than one office or branch  
thereof. In case the address of the principal place of  
business or of any branch office shall be changed, the  
department shall endorse the change of address on  
the license without charge.  

494.041 Brokers and solicitors offering mort­  
gages by land developers licensed pursuant to  
the Florida Uniform Land Sales Practices Law;  
requirements; prohibitions.—No mortgage loan  
which has a face amount of $35,000 or less and is  
secured by vacant land registered under the Florida  
Uniform Land Sales Practices Law, chapter 478,  
shall be sold to a mortgagee, except a financial insti­  
tution, by a mortgage broker or solicitor unless all  
of the following requirements are met:  

(1) Each mortgage securing a note or other obli­  
gation sold or offered for sale shall be eligible for a  
recordation as a first mortgage.  

(2) Each mortgage negotiated pursuant to this
section must include a mortgagee's title insurance policy or an opinion of title, from an attorney who is licensed to practice law in this state, on each parcel of land which is described in the mortgage. The policy or opinion shall reflect that there are no other mortgages on the property. A notice stating the priority of the mortgage shall be placed on the face of each mortgage in an amount over $35,000 issued pursuant to this section.

(3) Contracts to purchase a mortgage loan shall contain, immediately above the purchaser's signature line, the statement in 10-point boldface type: “This mortgage is secured by vacant land subject to development at a future time.” This statement shall also be typed or printed in 10-point type on the face of the note and mortgage sold.

(4) The most recent assessment for tax purposes made by the county property appraiser of each parcel of land described in the mortgage shall be furnished to each mortgagee.

(5) The mortgage broker shall record or cause to be recorded all mortgages or other similar documents prior to delivery of the note and mortgage to the mortgagee.

(6) All funds received by the mortgage broker pursuant to this section shall promptly be deposited in the broker's trust account where they shall remain until the note and mortgage are fully executed and recorded.

(7) Willful failure to comply with any of the above provisions shall subject the licensee to the penalties of s. 494.05.

History.—s. 3, ch. 77-397.

494.042 Mortgage Brokerage Guaranty Fund.—

(1) Effective September 1, 1977, the Treasurer shall establish a Mortgage Brokerage Guaranty Fund. A fee of $50 per license year shall be added to the license fee for both new licenses and renewal of licenses of a principal mortgage broker, and a fee of $10 per license year shall be added to the license fee for both new licenses and renewal of licenses by solicitors and additional brokers. This fee shall be in addition to the regular license fee and shall be transferred to or deposited in the Mortgage Brokerage Guaranty Fund. If the fund at any time exceeds $750,000, collection of special fees for this fund shall be discontinued at the end of that license year, and such special fees shall not be reimposed unless the fund is reduced below $500,000 by disbursement made in accordance with s. 494.044.

(2) The Mortgage Brokerage Guaranty Fund shall be disbursed as provided in s. 494.044, upon approval by the Division of Finance of the Department of Banking and Finance, to any person who is adjudged by a court of competent jurisdiction to have suffered monetary damages as a result of any of the following acts committed by a mortgage broker or mortgage solicitor who was licensed under this chapter at the time the act was committed:

(a) A violation of any provision of this chapter.

(b) Making any false promises likely to influence, persuade, or induce or pursuing a course of misrepresentation or false promises through agents.

(c) Misrepresentation, circumvention, or concealment by the licensee, through whatever subterfuge or device, of any of the material particulars or the nature thereof, regarding a transaction to which he is a party, and of injury to another party thereto.

(d) Failure to disburse funds in accordance with agreements.

(e) Failure to account or deliver to any person any personal property, such as any money, fund, deposit, check, draft, mortgage, or other document or thing of value, which has come into his hands and which is not his property or which he is not in law or equity entitled to retain, under the circumstances and at the time which has been agreed upon or is required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery.

(f) Failure to place, immediately upon receipt, any money, fund, deposit, check, or draft entrusted to him by a person dealing with him as a broker, in escrow with an escrow agent located and doing business in this state, pursuant to a written agreement, or to deposit said funds in a trust or escrow account maintained by him with a bank or savings and loan association located and doing business in this state, wherein said funds shall be kept until disbursement thereof is properly authorized.

History.—s. 10, ch. 77-397.

494.043 Conditions for recovery.—Any person shall be eligible to seek recovery from the Mortgage Brokerage Guaranty Fund if:

(1) Such person has received final judgment in a court of competent jurisdiction in this state in any action wherein the cause of action was based on s. 494.044;

(2) Such person has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;

(3) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and by his search he has discovered no property or assets or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount thereby realized was insufficient to satisfy the judgment;

(4) Such person has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court;

(5) Such person, at the time the action was instituted, gave notice thereof to the department by certified mail; and

(6) The act for which recovery is sought occurred on or after September 1, 1977.

History.—s. 10, ch. 77-397.

494.044 Payment from the fund.—

(1) Any person who meets all of the conditions prescribed in s. 494.043 may apply to the department for payment to be made to such person from the
Mortgage Brokerage Guaranty Fund in the amount equal to the unsatisfied portion of such person's judgment or $10,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages.

(2) Upon receipt by the claimant of the payment from the Mortgage Brokerage Guaranty Fund, the claimant shall assign any additional right, title, and interest in the judgment, to the extent of such payment, to the department.

(3) Payments for claims shall be limited in the aggregate to $50,000, regardless of the number of claims involved, against any one mortgage broker or mortgage solicitor. If the total claims exceed the aggregate limit of $50,000, the department shall prorate the payment based on the ratio that the person's claim bears to the total claims filed.

(4) If at any time the money in the Mortgage Brokerage Guaranty Fund is insufficient to satisfy any valid claim or portion thereof, the department shall satisfy such unpaid claim or portion thereof as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were filed with the department.

(5) All payments and disbursements made from the Mortgage Brokerage Guaranty Fund shall be made by the Treasurer upon a voucher signed by the Comptroller, as head of the department, or such agent as he may designate.

(6) The payment of any amount from the Mortgage Brokerage Guaranty Fund in settlement of a claim or in satisfaction of a judgment against a licensee shall constitute prima facie grounds for the revocation of the license of such licensee.

494.045 Investments of the fund.—The funds of the Mortgage Brokerage Guaranty Fund shall be invested by the Treasurer under the same limitations as other state funds, and the interest earned thereon shall be deposited to the credit of the fund and available for the same purpose as other moneys deposited in the Mortgage Brokerage Guaranty Fund.

494.05 Denial, suspension or revocation of license.—

(1) The department may, upon its motion, or upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business of acting in the capacity of a licensee under this act, within this state. The license of a licensee may be suspended for a period not exceeding 2 years, or until compliance with a lawful order imposed in the final order of suspension, or both, upon a finding of facts showing that the licensee has been guilty of any of the following:

(a) Making any false promises likely to influence, persuade, or induce; or pursuing a course of misrepresentation or false promises through agents or solicitors, or advertising or otherwise.

(b) Misrepresentation, circumvention, or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof, regarding a transaction to which he is a party, and of injury to another party thereto.

(c) Failure to disburse funds in accordance with his agreements.

(d) A crime against the laws of this state or any other state or of the United States, involving moral turpitude or fraudulent or dishonest dealing, or if a final judgment has been entered against him in a civil action upon grounds of fraud, misrepresentation or deceit.

(e) Failure to account or deliver to any person any personal property such as money, fund, deposit, check, draft, mortgage, or other document, or thing of value, which has come into his hands, and which is not his property, or which he is not in law or equity entitled to retain, under the circumstances, and at the time which has been agreed upon, or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery.

(f) Failure to place, immediately upon receipt, any money, fund, deposit, check or draft, entrusted to him by any person dealing with him as a broker, in escrow with an escrow agent located and doing business in Florida, pursuant to a written agreement, or to deposit said funds in a trust or escrow account maintained by him with some bank located and doing business in Florida, wherein said funds shall be kept until the mortgage is recorded or the mortgage brokerage fee has been earned on the basis that the lender's commitment has been received by the mortgage broker according to the same terms and conditions contained in the brokerage agreement or otherwise accepted in writing by the mortgagor. The disbursement procedures herein prescribed shall not supersede the requirements of s. 494.041(6).

(g) Failure to comply with any of the provisions of this act, or with any lawful order, rule or regulation made or issued under the provisions of this act.

(h) Conduct which would be the cause for denial of a license.

(i) Insolvency.

(j) Failure to issue a satisfaction of mortgage when the mortgage has been executed and proceeds were not disbursed to the benefit of the mortgagor and when the mortgagor has fully paid the mortgage broker's costs and commission.

(2) The license of a licensee may be revoked, if the application for the license is found to contain a material misstatement, or the licensee demonstrates by a course of conduct negligence or incompetence in performing any act for which he is required to hold a license under this act, or if the licensee for a second time, shall be found guilty of any misconduct which warrants his suspension under subsection (1).

(3) If a licensee is a person other than an individual, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or members of the licensed corporation, partnership, association or other group, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual.

(4) The department may refuse a license if it determines that an applicant does not meet all require-
ments of s. 494.04 or has violated any provision of this chapter, except that any applicant aggrieved by such refusal shall be entitled to a hearing after reasonable notice thereof upon filing a written request for such hearing.

(5) Any licensee aggrieved by an order issued by the department suspending or revoking his license may apply for a review thereof by filing a petition for certiorari in the Circuit Court of the county in which said person is licensed within the time and in the manner provided by the Florida Appellate Rules.

History.—s. 5, ch. 59-309; s. 4, ch. 63-58; s. 5, ch. 63-512; s. 1, ch. 69-267; ss. 12, 35, ch. 69-106; s. 2, ch. 73-205; ss. 4, 11, ch. 77-397.

494.051 Evidence; examiner's worksheet, investigative reports, other related documents.—In any hearing in which the financial examiner acting under authority of this act is available for cross-examination, any official written report, worksheet, other related papers, or duly certified copy thereof, compiled, prepared, drafted, or otherwise made by said financial examiner, after being duly authenticated by said examiner, may be admitted as competent evidence upon the oath of said examiner that said worksheet, investigative report, or other related documents were prepared as a result of an examination of the books and records of a mortgage broker or other person, conducted pursuant to the authority of this act.

History.—s. 5, ch. 77-397.

494.06 Investigations and complaints; books, accounts, records, etc.—

(1) Every principal broker shall maintain, at the place of business designated in the license certificate, such books, accounts, records and documents of the business conducted under the license issued for such place of business as will enable the department to determine whether the business of the licensee contemplated by this act is being operated in accordance with the provisions of this act.

(2) A licensee operating two or more licensed places of business in this state, may maintain the general control records of all such offices at any one of the offices, or at any other licensed office maintained by the licensee, upon the filing of a written request with the department designating therein the office at which such control records are maintained.

(3) All books, accounts, records and documents of licensees, including a closing statement signed by the borrower shall be preserved and available for examination by the department for at least 5 years from date of original entry.

(4) The department is authorized to prescribe the minimum information to be shown in the books, accounts, records and documents of licensees so that such records will enable the department to determine compliance with the provisions of this act.

(5) The department may, at intermittent periods, make such investigations and examinations of any licensee or other person as it deems necessary to determine compliance with this act. For such purposes, it may examine the books, accounts, records and other documents or matters of any licensee or other person. It shall have the power to compel the production of all relevant books, records and other documents and materials relative to an examination or investigation. Such investigations and examinations shall not be made more often than once during a year unless the department has reason to believe the licensee is not complying with the provisions of this act. Examinations conducted under the provisions of this act shall be confidential with the department except as required in the administration, enforcement and prosecution of violations under this act.

(6) Any party having reason to believe that this act has been violated, or that a license is subject to suspension or revocation, may file with the department a written complaint setting forth the details of such alleged violation or grounds for suspension or revocation.

History.—s. 6, ch. 59-309; s. 2, ch. 65-215; ss. 12, 35, ch. 69-106.

494.07 Powers of department.—

(1) The department, or its duly authorized representative, shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before it in any matter over which it has jurisdiction under this act. The department, or its duly authorized representative, shall have power to administer oaths and affirmations to any person.

(2) If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the circuit court having jurisdiction over that person may, upon application and proof of such refusal, make an order awarding process of subpoena duces tecum, for the witness to appear before the department, or its duly authorized representative, and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the circuit court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed to appear at the time and place therein designated.

(3) If any person served with any such subpoena shall refuse to obey the same or to give testimony or to produce evidence as required thereby, the department may apply to the circuit court having jurisdiction over the person for an attachment against such person.

(4) The department may issue and promulgate such rules and regulations as it may deem necessary in the administration of this act and not inconsistent therewith, which rules and regulations shall have the force and effect of law.

History.—s. 7, ch. 59-309; ss. 12, 35, ch. 69-106.

494.071 Injunction to restrain violations.—

(1) The department may investigate when it shall appear to it, either upon complaint or otherwise, that in the sale, promotion, negotiation, advertisement or hypothecation of mortgage transactions within this state, including any transaction consummated by parties under the provisions of s. 494.03, any person:

(a) Shall have employed, employs, or is about to employ, any device, scheme or artifice to defraud or for obtaining money or property involving a mortgage on real property by means of any false pretense, representation or promise; or

(b) Shall have made, makes, or attempts to make
in this state fictitious or pretended loan commitments or fraudulently accepts a deposit for a mortgage loan commitment; or
(c) Shall have engaged in, engages in, or is about to engage in any practice or transaction or course of business relating to the purchase or negotiation of a mortgage loan:
1. Which is in violation of the law; or
2. Which is fraudulent; or
3. Which has operated or which would operate as a fraud on the mortgage broker or mortgagee.
(d) Is acting as broker or solicitor within this state without being duly registered as such broker or solicitor as provided in this chapter.
(2) Whenever any such person has engaged or is engaged or is about to engage in any of the practices or transactions which would be fraudulent and inconsistent with the intent of this chapter, or acts in violation of this chapter, or is acting as a broker or solicitor without being duly registered as provided in this chapter, the department may, in addition to any other remedies, by its own counsel bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such fraudulent practices or acting in violation of this chapter, to enjoin such person from continuing such fraudulent practices or engaging therein or doing any act in furtherance thereof or in violation of this chapter.
(3) In any such court proceedings, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring forthwith the production of documents, books and records that may appear necessary for the hearing of such petition, and the appearance of any defendant and his employees, solicitors or agents to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. In such action the equity courts shall have jurisdiction of the subject matter and a judgment may be entered of, such failure or refusal shall constitute a violation of, this act.
494.08 Requirements and prohibitions.—
(1) No person shall advertise, print, display, publish, distribute, telecast or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, televised or broadcast, in any manner, any statement or representation with regard to the rates, terms or conditions pertaining to the making, negotiating, or sale of loans, which is false, misleading, or deceptive. No person who is not licensed under this act nor exempt under s. 494.03 shall use the word mortgage or similar words in any advertising, signs, letterheads, cards, or like matter which tend to represent that he arranges real estate mortgage loans. No person not already registered under this act shall be granted a license in a name containing such words as insured, bonded, guaranteed, secured and the like. No person shall advertise or offer to sell insured or guaranteed mortgages unless the principal and interest of such mortgages is insured by an insurance company authorized by the Department of Insurance to write such insurance under the provisions of chapter 636, or unless such mortgages are wholly or partially insured or guaranteed by an agency of the federal government.
(2) No person in connection with or incidental to the making of any mortgage loan shall induce, require or permit the mortgage deed or note to be signed by a principal to the transaction if such instruments contain any blank spaces to be filled in after it has been signed, except blank spaces relating to recording or other incidental information not then available.
(3) No person shall charge or exact directly or indirectly from the mortgage broker a fee or commission in excess of the maximum fees or commissions as set forth herein. The fee or commission shall include all direct and indirect costs and expenses incidental to the processing and closing of the mortgage loan transaction, including but not limited to appraisal fees, abstracting charges from the date of application to date of closing, title insurance premiums, and attorneys' fees, but shall not include the cost of state intangible taxes, documentary stamps, and recording fees actually paid to a public official, nor shall it include the cost of an abstract of title covering the property to be mortgaged for the period prior to the date of application.
(4) The maximum fees or commissions which may be charged for any mortgage loans shall be as follows:
(a) On mortgage loans of $1,000 or less: $250.
(b) On mortgage loans in excess of $1,000 and not more than $2,000: $250 for the first $1,000 of the mortgage loan, plus $10 for each additional $100 of the mortgage loan.
(c) On mortgage loans in excess of $2,000 and not more than $5,000: $350 for the first $2,000 of the
mortgage loan, plus $10 for each additional $100 of the mortgage loan.

(d) On mortgage loans in excess of $5,000: $250 plus 10 percent of the entire mortgage loan.

For the purpose of determining maximum fees or commissions, the amount of the mortgage loan shall be based on the proceeds of said mortgage loan exclusive of the authorized maximum fees or commissions.

(5) No unlicensed person shall charge or receive any commission, bonus or fee in connection with arranging for, negotiating, selling, or purchasing a mortgage loan.

(b) No licensed broker or solicitor shall pay any commission, bonus or fee in connection with arranging for, negotiating, selling, or purchasing a mortgage loan to any person operating in Florida not licensed under the provisions of this act.

(6) No person shall accept a deposit or application for a mortgage loan without delivering to the borrower a statement in writing setting forth the total maximum costs to be charged, incurred, or disbursed in connection with processing and closing the mortgage loan.

(7) Mortgage loans insured or guaranteed by an agency of the federal government are exempt from the provisions of subsections (3) and (4).

(8) Each mortgage negotiated pursuant to this chapter shall include, with a copy delivered to the lender, a mortgagee’s title insurance policy or an opinion of title from an attorney who is licensed to practice law in this state, unless waived in writing by the lender on the land which is described in the mortgage. The policy or opinion shall reflect the priority of the mortgage.

(9) Each mortgage or instrument securing a note shall, unless waived in writing by the lender, be recorded before being delivered to a permanent lender.

(10) Each mortgage or instrument securing a note delivered to a lender on other than a first mortgage shall be accompanied by a statement showing the balance owed by the mortgagor on any existing mortgages prior to this investment and the status of such existing mortgages. The provisions of this subsection shall not apply to mortgages insured by an agency of the Federal Government.

(11) No unlicensed person shall charge or receive any commission, bonus or fee in connection with arranging for, negotiating, selling, or purchasing a mortgage loan.

(12) No licensed broker or solicitor shall pay any commission, bonus or fee in connection with arranging for, negotiating, selling, or purchasing a mortgage loan to any person operating in Florida not licensed under the provisions of this act.

(13) No person shall accept a deposit or application for a mortgage loan without delivering to the lender a statement in writing setting forth the total maximum costs to be charged, incurred, or disbursed in connection with processing and closing the mortgage loan.

(14) Mortgage loans insured or guaranteed by an agency of the federal government are exempt from the provisions of subsections (3) and (4).

(15) Each mortgage negotiated pursuant to this chapter shall include, with a copy delivered to the lender, a mortgagee’s title insurance policy or an opinion of title from an attorney who is licensed to practice law in this state, unless waived in writing by the lender on the land which is described in the mortgage. The policy or opinion shall reflect the priority of the mortgage.

(16) Each mortgage or instrument securing a note shall, unless waived in writing by the lender, be recorded before being delivered to a permanent lender.

(17) Each mortgage or instrument securing a note delivered to a lender on other than a first mortgage shall be accompanied by a statement showing the balance owed by the mortgagor on any existing mortgages prior to this investment and the status of such existing mortgages. The provisions of this subsection shall not apply to mortgages insured by an agency of the Federal Government.

494.09 Applicability of act.—Failure to comply with the provisions of this act shall not affect the validity or enforceability of any mortgage loan, and no person acquiring a mortgage loan, as mortgagee or assignee, shall be required to ascertain whether or not the provisions of this act have been complied with.

History.—s. 9, ch. 59-309.

494.091 Liability in case of unlawful transaction.—In the event a mortgage transaction is made in violation of any of the provisions of this chapter, the person making the transaction and every director, officer, or agent who has personally participated in making the transaction shall be jointly and severally liable to the lender in an action for damages incurred by the lender.

History.—s. 14, ch. 77-397.

494.092 Statutory or common law remedies.—Nothing in this chapter shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the mortgage, or the right of the state to punish any person for any violation of any law.

History.—s. 14, ch. 77-397.

494.093 Prohibited practices.—It is unlawful, and a violation of the provisions of this chapter, for any person:

(1) In any practice or transaction or course of business relating to the sale, purchase, negotiation, promotion, advertisement, or hypothecation of mortgage transactions, including any transaction consummated by parties under the provisions of s. 494.03, directly or indirectly:

(a) To knowingly or willingly employ any device, scheme, or artifice to defraud.

(b) To engage in any transaction, practice, or course of business which operates as a fraud upon any person in connection with the purchase or sale of any mortgage loan.

(2) In any matter within the jurisdiction of the department, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, or make any false or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false or fraudulent statement or entry.

History.—s. 14, ch. 77-397.

494.10 Penalties.—

(1) Whoever violates any of the provisions of this chapter shall constitute a separate offense.

(2) Whoever violates any provision of s. 494.093, fails to comply with the requirements of s. 494.05(1)(f), or offers to negotiate a mortgage loan for compensation without being licensed as required by this chapter is guilty of a felony of the third degree,
punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 10, ch. 59-309; s. 449, ch. 71-136; s. 15, ch. 77-397.

494.11 Waiver.—Any waiver of the provisions of this act shall be unenforceable and void.

History.—s. 11, ch. 59-309.

cf.—s. 494.08(8) and (9) written waiver by lender.
CHAPTER 495
REGISTRATION OF TRADEMARKS AND SERVICE MARKS

495.011 Definitions.-As used in this chapter:
(1) "Trademark" means any word, name, symbol, character, design, drawing or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.
(2) "Service mark" means any word, name, symbol, character, design, drawing or device or any combination thereof, and the distinctive features of radio, television or other advertising, adopted and used by a person to identify services rendered or offered by him and to distinguish them from services rendered or offered by others.
(3) "Certification mark" means a trademark or service mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.
(4) "Collective mark" means a trademark or service mark used by the members of a cooperative, an association or other collective group or organization and includes marks used to indicate membership in a union, an association or other organization.
(5) Unless the context otherwise requires, "mark" means any trademark, service mark, certification mark or collective mark.
(6) "Trade name" means any word, name, symbol, character, design, drawing or device or any combination thereof adopted and used by a person to identify his business, vocation or occupation and to distinguish it from the business, vocation or occupation of others.
(7) "Person" means any individual, firm, partnership, corporation, association, union or other organization.
(8) "Applicant" embraces the person filing an application for registration of a mark under this chapter, his legal representatives, successors or assigns.
(9) "Registrant" embraces the person to whom the registration of a mark under this chapter is sued, his legal representatives, successors or assigns.
(10) "Related company" means any person who legitimately controls or is controlled by the registrant or owner of the mark in respect to the nature and quality of the goods or services in connection with which the mark is used.
(11) A trademark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in this state, and a service mark shall be deemed to be "used" in this state when it is used or displayed in the sale or advertising of services in this state or in connection with services rendered in this state.

History.-s. 1, ch. 67-58.

495.021 Registrability.-(1) A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:
(a) Consists of, comprises or includes immoral, deceptive or scandalous matter; or
(b) Consists of, comprises or includes matter which may disparage or falsely suggest a connection with persons, living or dead, corporations, firms, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or
(c) Consists of, comprises or includes the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or
(d) Consists of, comprises or includes the name, signature or portrait of any living individual, except with his written consent; or
(e) Consists of a mark which:
1. When applied to the goods or services of the applicant is merely descriptive or deceptively misdescribe of them, or
2. When applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them or their source or origin, or
3. Is primarily merely a surname, provided, however, that nothing in this paragraph shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services in this state or elsewhere.

The Department of State may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for 1 year next preceding the date of the filing of the application for registration; or
(f) Consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.
(2) Subject to the provisions relating to the regis-
495.031 Application for registration.—

(1) Subject to the limitations set forth in this chapter, any person who adopts and uses a trademark or service mark in this state may file with the Department of State, on a form to be furnished by the department, an application for registration of that trademark or service mark setting forth, but not limited to, the following information:

(a) The name and business address of the person applying for such registration, and, if a corporation, the state of incorporation;

(b) The goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class or classes in which such goods or services fall;

(c) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business or a related company of the applicant or his predecessor; and

(d) A statement that the applicant is the owner of the mark and that no other person except a related company has the right to use such mark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or confuse or to be mistaken therefor.

(2) Every applicant for registration of a certification mark in this state shall file with the Department of State, on a form to be furnished by the department, an application setting forth, but not limited to, the following information:

(a) The information required by subsection (1)(a) and (b);

(b) The date when the certification mark was first used anywhere and the date when it was first used in this state under the authority of the applicant, or related companies issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary of State and the seal of the state, and accompanied by a specimen or facsimile of such mark in triplicate.

495.041 Use by related companies.—Where a mark registered or unregistered is or may be used legitimately by related companies, such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public.

495.051 Disclaimers.—

(1) The Department of State may require the applicant for registration to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

(2) No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall become distinctive of his goods or services.

495.061 Certificate of registration.—

(1) Upon compliance by the applicant with the requirements of this chapter, the Department of State shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary of State and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the mark in this state; the
and the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class or classes of goods or services on which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

(2) Any certificate of registration issued by the Department of State under the provisions hereof or a copy thereof duly certified by the Department of State shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any action or judicial proceedings in any court of this state, and shall be prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in this state in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein.

495.071 Duration and renewal.—
(1) Registration of a mark hereunder shall be effective for a term of 10 years from the date of registration and, upon application filed within 6 months prior to the expiration of such term, on a form to be furnished by the Department of State, the registration may be renewed for a like term. A renewal fee of $15 for each class of goods or services with respect to which such renewal is sought, payable to the Department of State, shall accompany the application for renewal of the registration.

(2) A mark registration may be renewed for successive periods of 10 years in like manner.

(3) The Department of State shall notify registrants of marks hereunder of the necessity of renewal within the year next preceding the expiration of the 10 years from the date of registration by writing to the last known address of the registrants.

(4) Any registration in force on the date on which this chapter shall become effective shall be effective for a term of 10 years from the date of the registration or of the last renewal thereof or 1 year after the effective date of this chapter, whichever is later, and may be renewed by filing an application with the Department of State on a form furnished by it and paying the aforementioned renewal fee therefor within 6 months prior to the expiration of the registration.

(5) All applications for renewals under this chapter shall include a statement that the mark is still in use in this state, or that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

495.081 Assignment.—Any mark and its registration hereunder shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the Department of State upon the payment of a fee of $15, payable to the Department of State which, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice, unless such assignment is recorded with the Department of State within 3 months after the date thereof or at any time after the expiration of such three month period, unless an assignment given in connection with any subsequent purchase is recorded with the Department of State prior to or within 10 days after such assignment is recorded.

495.091 Records.—The Department of State shall keep for public examination a record of all marks registered or renewed under this chapter.

495.101 Cancellation.—The Department of State shall cancel from the register:
(1) After 1 year from the effective date of this chapter, all registrations under prior laws which are more than 10 years old and not renewed in accordance with this chapter.

(2) Any registration concerning which the Department of State shall receive a voluntary request for cancellation thereof from the registrant.

(3) All registrations granted under this chapter and not renewed in accordance with the provisions hereof.

(4) Any registration concerning which a court of competent jurisdiction shall find that:
(a) The registered mark has been abandoned;
(b) The registrant of a trademark or service mark is not the owner of the mark;
(c) The registration was granted improperly;
(d) The registration was obtained fraudulently;
(e) The registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent Office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove that he is the owner of a concurrent registration of his mark in the United States Patent Office covering an area including this state, the registration hereunder shall not be canceled;
(f) In the case of a certification mark, that the registrant does not exercise control over the use of such mark; or engages in the production or marketing of any goods or services to which the certification mark is applied; or permits the use of the certification mark for purposes other than to certify; or discriminates by refusing to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.

(5) When a court of competent jurisdiction shall order cancellation of a registration on any ground.

495.111 Classification.—
(1) The following general classes of goods and services are established for convenience of administration of this chapter:
(a) Goods:
1. Raw or partly prepared materials.
2. Receptacles.
3. Baggage, animal equipments, portfolios, and pocketbooks.
4. Abrasives and polishing materials.
5. Adhesives.
6. Chemicals and chemical compositions.
7. Cordage.
8. Smokers' articles, not including tobacco products.
9. Explosives, firearms, equipments, and projectiles.
10. Fertilizers.
11. Inks and inking materials.
13. Hardware and plumbing and steamfitting supplies.
15. Oils and greases.
17. Tobacco products.
18. Medicines and pharmaceutical preparations.
20. Linoleum and oilcloth.
22. Games, toys and sporting goods.
23. Cutlery, machinery, and tools, and parts thereof.
24. Laundry appliances and machines.
25. Locks and safes.
27. Horological instruments.
28. Jewelry and precious metalware.
29. Brooms, brushes, and dusters.
30. Crockery, earthenware, and porcelain.
31. Filters and refrigerators.
32. Furniture and upholstery.
33. Glassware.
34. Heating, lighting, and ventilating apparatus.
35. Belting, hose, machinery packing, and non-metallic tires.
36. Musical instruments and supplies.
37. Paper and stationery.
38. Prints and publications.
40. Fancy goods, furnishings and notions.
41. Canes, parasols, and umbrellas.
42. Knitted, netted and textile fabrics, and substitutes thereof.
43. Thread and yarn.
44. Dental, medical and surgical appliances.
45. Soft drinks and carbonated waters.
46. Foods and ingredients of foods.
47. Wines.
48. Malt beverages and liquors.
49. Distilled alcoholic liquors.
50. Merchandise not otherwise classified.
51. Cosmetics and toilet preparations.
52. Detergents and soaps.
(b) Services:
100. Miscellaneous.
102. Insurance and financial.

495.121 Fraudulent registration.—Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any mark with the Department of State under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, and for punitive or exemplary damages, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

495.131 Infringement.—Subject to the provisions of s. 495.161, any person who shall:

1. Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter on any goods or in connection with the sale, offering for sale, distribution or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source or origin of such goods or services; or
2. Reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in conjunction with the sale, offering for sale, distribution or advertising in this state of goods or services;

Shall be liable in a civil action by the owner of such registered mark for any or all of the remedies provided in s. 495.141, except that under subsection (2) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

495.141 Remedies.—

1. Any owner of a mark registered under this chapter may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court
deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale and to pay the costs of the action; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty.

(2) The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

495.151 Injury to business reputation; dilution.—Every person, association, or union of workingmen adopting and using a mark, trade name, label or form of advertisement may proceed by suit, and all courts having jurisdiction thereof shall grant injunctions, to enjoin subsequent use by another of the same or any similar mark, trade name, label or form of advertisement if it appears to the court that there exists a likelihood of injury to business reputation or of dilution of the distinctive quality of the mark, trade name, label or form of advertisement of the prior user, notwithstanding the absence of competition between the parties or of confusion as to the source of goods or services.

495.161 Common law rights.—Nothing herein shall adversely affect or diminish the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

495.171 Effective date; repeal of prior acts.—This chapter shall be in force and take effect October 1, 1967, after its enactment, but shall not affect any suit, proceeding or appeal then pending. Former ss. 495.01-495.14 are repealed on the effective date of this act, provided that as to any suit, proceeding or appeal, and for that purpose only, pending at the time this chapter takes effect such repeal shall be deemed not to be effective until final determination of said pending suit, proceeding or appeal.
CHAPTER 496
CHARITABLE FUNDS ACT

496.01 Short title.—This act shall be known and may be cited as the “Charitable Funds Act.”

History.—s. 1, ch. 65-218; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.

496.02 Definitions.—As used in this chapter:

(a) “Charitable organization” means a group which is or holds itself out to be a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary organization or any person who solicits or obtains contributions solicited from the public for charitable purposes after the effective date of this chapter. A chapter, branch, area, office or similar affiliate or any person soliciting contributions within the state shall not be deemed a charitable organization.

(b) A bona fide salaried officer or employee of a charitable organization, designated by the organization as agent for service of process; notice of such service to organization.

(c) “Professional solicitor” does not include a person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable organization whether such solicitation is performed personally or through his agents, servants or employees or through agents, servants or employees specially employed by or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on or advises a charitable organization in connection with the solicitation of contributions; however, no agent, servant, or employee of a professional solicitor shall be deemed to be a professional solicitor.

(b) A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a professional solicitor. However, any bona fide salaried officer or employee of a charitable organization that engages in the solicitation of contributions in any manner for more than one charitable organization shall be deemed a professional solicitor.

(c) “Professional solicitor” does not include a person who solicits contributions for, or on behalf of, a charitable organization within the state and when such solicitation is performed personally or through his agents, servants or employees or through agents, servants or employees specially employed by or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on or advises a charitable organization in connection with the solicitation of contributions; however, no agent, servant, or employee of a professional solicitor shall be deemed to be a professional solicitor.

(d) No attorney, investment counselor, or banker who advises any person to make a contribution to a charitable organization shall be deemed, as a result of such advice, to be a professional solicitor.

(6) “Gross contributions” and “cost of fund raising” shall be determined in accordance with a uniform system of accounting which shall be prescribed by the department.

History.—s. 2, ch. 65-218; s. 1, ch. 67-205; s. 1, ch. 74-332; s. 1, ch. 76-162, s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.
'496.021  Powers and duties of the Department of State.—
(1) The Department of State is hereby vested with the power, jurisdiction, and authority to issue, deny, suspend, and revoke certificates to organizations which obtain contributions solicited from the public for charitable purposes and to professional solicitors who, for financial or other consideration, solicit contributions for, or on behalf of, a charitable organization. The department shall have the power, jurisdiction, and authority, after due notice to, and consultation with, representatives of charitable organizations and an opportunity for all such to be heard, to promulgate reasonable rules and regulations pursuant to chapter 120, and to prescribe forms for registration or other purposes not in conflict with the constitution and laws of the United States or of this state, and may amend same at its pleasure.
(2) In addition to the authority granted the department by this chapter, it may commence and maintain in a court of competent jurisdiction all proper and necessary actions and proceedings to enjoin and abate any act prohibited by this chapter.
(3) The department shall make such individual investigations of all applicants for certificates of registration as it may deem necessary.

History.—s. 2, ch. 74-332; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.

'496.03 Registration of charitable organizations.—
(1) Every charitable organization which intends to solicit contributions within this state, or have funds solicited on its behalf, shall, prior to any solicitation, file a registration statement with the Department of State upon forms prescribed by it. The registration statement shall contain the following information:
(a) The name of the organization and the purpose for which it was organized.
(b) The principal address of the organization and the address of any offices in this state. If the organization does not maintain an office, the name and address of the person having custody of its financial records.
(c) The names and addresses of any chapters, branches or affiliates in this state.
(d) The place where and the date when the organization was legally established, the form of its organization, and a reference to any determination of its tax exempt status under the Internal Revenue Code.
(e) The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer.
(f) A copy of a financial statement on forms approved by the Department of State and audited by an independent public accountant which covers complete disclosure of all the fiscal activities of the charitable organization during preceding years. Such report shall also specifically identify the amount of funds raised and all costs and expenses incidental thereto, all publicity costs, and costs of allocation or disbursement of funds raised. Any charitable organization that does not actually raise or receive contributions from the public in excess of $10,000 in gross receipts during the organization's fiscal year may submit the information on forms approved by the Department of State in a statement signed by an authorized officer, verified under oath, and attested to by the chief fiscal officer of the organization. Such statement shall be in lieu of an audit by an independent public accountant.
(g) Whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others.
(h) Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions.
(i) The general purpose or purposes for which the contributions to be solicited shall be used.
(j) The name or names under which it intends to solicit contributions.
(k) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions.
(l) The names of the individuals or officers of the organization responsible for the final distribution of the contributions.
(2) Except as otherwise herein provided, the registration forms and any other documents prescribed by the Department of State shall be signed by an authorized officer and by the chief fiscal officer of the charitable organization, and such forms and documents shall be verified under oath and shall be accompanied by the registration fee of $50.
(3) It shall be the duty of every charitable organization to furnish identification to persons who solicit contributions from the public on behalf of the charitable organization, or that persons soliciting on behalf of an exempt or nonexempt organization and all professional solicitors. The solicitor shall be required to have and produce or display, on demand, identification indicating that the said solicitor has been duly authorized by the organization for which he is soliciting. Such identification shall include, but not be limited to, the name of the holder of the identification and the name and number of the certificate of the charitable organization.

History.—s. 3, ch. 65-218; s. 2, ch. 67-205; ss. 10, 35, ch. 69-106; s. 3, ch. 74-332; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.

'496.031 Registration of professional solicitors.—
(1) No person shall act as a professional solicitor for a charitable organization subject to the provisions of this chapter unless he has first registered with the Department of State and received a certificate of registration. Application for registration shall be in writing under oath or affirmation in the form prescribed by the Department of State and contain such information as the Department of State may require. No person who has been convicted within the past 5 years for a violation of any part of this chapter and no person convicted of a felony in this or any other state shall be eligible for a certificate of registration or serve as an employee, member, officer or agent of any professional solicitor until his civil rights have been restored.
(2) Every person shall, before being employed within this state by a professional solicitor for the purpose of making, supervising, or participating in any solicitation, make application to the Department of State for a certificate as an employee. However, no such application is required for employees making only telephone solicitations if such solicitations are made under the direct supervision of a professional solicitor who has a current certificate of registration or an employee who holds a current certificate as an employee. Such application shall be in the same manner and shall require the same qualifications as set forth in subsection (1). The annual fee for an employee certificate shall be $10. If the Department of State declines to issue the certificate to such employee, the employment of such person shall be terminated.

(3) The applicant shall, at the time of making application, file with and have approved by the Department of State, a bond in which the applicant shall be the principal obligor in the sum of $10,000 with one or more sureties, satisfactory to the Department of State, whose liability in the aggregate as such sureties, will at least equal the said sum and maintain said bond in effect so long as a registration is in effect. The bond shall be payable to the State of Florida for the use of the Department of State and any person who may have a cause of action against the obligor of said bonds for any losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of solicitation activities. An individual, partnership or corporation, which is a professional solicitor, may file a consolidated bond on behalf of all its members, officers and employees.

(4) The annual registration fee for every person who is a professional solicitor in this state shall be $500. The annual registration shall expire at midnight on December 31 of each year.

History.—s. 3, ch. 67-205; ss. 10, 36, ch. 69-106; s. 4, ch. 74-332; s. 2, ch. 76-162; s. 3, ch. 76-168; s. 1, ch. 77-247.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.

496.04 Certain persons and organizations exempt from registration fee.—

(1) The following charitable organizations shall be exempt from the registration fee provisions of this chapter:

(a) Educational institutions, the curriculums of which in whole or in part are registered or approved by the Department of Education, either directly or by acceptance of accreditation by an accrediting body recognized by the Department of Education; provided, that such educational institutions simultaneously file with the Department of State duplicates of such annual fiscal reports as are filed with the Department of Education or other accrediting agency.

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

(c) Charitable organizations which do not intend to solicit and receive and do not actually raise or receive contributions from the public in excess of $2,000 during a calendar year or do not receive contributions from more than 10 persons during a calendar year, if all of their functions, including fund raising activities, are carried on by persons who are unpaid for their services and if no part of the organizations’ assets or income inures to the benefit of or is paid to any officer or member.

(2) Nevertheless, if the contributions raised from the public, whether all of such are or are not received by any charitable organization during any calendar year, shall be in excess of $2,000, the charitable organization shall, within 30 days after the date it shall have received total contributions in excess of $2,000, register with and report to the Department of State as required by this chapter.

(d) Any organization organized solely to operate a hospital licensed under chapter 395.

(e) Organizations which solicit only within the membership of the organization by members thereof; however, the term " membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(f) A local post, camp, chapter, or similarly designated element, or a county unit of such elements of a bona fide veterans’ organization which issues chapters to such local elements throughout this state, a bona fide organization of volunteer firemen, a bona fide ambulance association or bona fide rescue squad association or a bona fide auxiliary or affiliate of any such organization, provided all its fund raising activities are carried on by members of such an organization or an affiliate thereof, and such members receive no compensation directly or indirectly therefor.

(g) Any nonprofit community club, civic club, garden club, women’s club, or other similar civic group organized and in existence for more than 2 years, with no capital stock or salaried executive employees, officers, members or agents, with at least 25 members with annual dues collected of not less than $5 per member, in which all of the funds collected, less reasonable expenses, are disbursed pursuant to the directions of the membership or the board of directors and with the membership being furnished at least one written report each year by the directors as to its charitable activities.

2(a) Any charitable organization exempt from the registration fee provisions of this chapter shall submit annually to the Department of State, on forms prescribed by it, an application setting forth the reason for the exemption and including the name, address, and purpose of the organization and such other information as the Department of State may require.

(b) The Department of State shall annually issue a certificate of registration to an exempted charitable organization. No registration fee shall be required of any exempt organization; however, upon an original application being submitted by an exempt organization, the application shall be accompanied by a $10 charge to defray the administrative costs of the department for such original application only.

(3) Any otherwise exempt charitable organization shall lose such exemption when it employs a
professional solicitor or continues to solicit after the expiration of its current registration certificate.

History.—s. 4, ch. 65-218; s. 4, ch. 67-210; ss. 10, 35, ch. 69-106; s. 6, ch. 74-332; s. 2, ch. 75-169; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.

1496.041 Manner of filing registration statement; fees.—
(1) Each chapter, branch or affiliate of a parent organization or independent member agency of a federated fund-raising organization, may separately report the information required by s. 496.03, or report the information to its parent organization or to the federated fund-raising organization with which it is affiliated, which shall then transmit such information as to its affiliates, branches, chapters or independent agency members to the Department of State along with its own statement.

(2) Each parent organization filing the registration statements of one or more of its chapters, branches, or affiliates along with its own statement, and a federated fund-raising organization filing the statements of one or more of its independent member agencies along with its own statement shall pay a single registration fee of $50 for itself and for such chapters, branches, affiliates or independent member agencies whose statements are filed by it at the same time as its own statement. However, when an independent member agency of a federated fund-raising organization solicits or receives contributions from any source other than the federated fund-raising organization or a government agency, such independent member agency shall be required to register independently and pay its own filing fee, unless otherwise exempt by this chapter.

(3) All certificates of registration for professional solicitors shall expire on December 31 of the year in which issued.

(4) Each charitable organization shall file all information required by this chapter with the Department of State within 6 months of the close of its fiscal year. The last day of the 6th month following the month in which the fiscal year of the organization ends shall be the anniversary date of the organization. All certificates of registration shall expire on the anniversary date of the organization. Each annual registration application shall be received by the department on or before the anniversary date.

(5) Any organization failing to renew its registration or exemption by the time of the expiration thereof, shall be automatically suspended from the right to operate under the provisions of this chapter until the registration is renewed. All renewals of registration shall be made in the same manner and upon payment of the same fee as an original registration.

History.—s. 5, ch. 65-218; s. 10, 35, ch. 69-106; s. 6, ch. 74-332; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.

1496.05 Hearing on denial of registration.—The Department of State shall examine each application, and if it finds it to be in conformity with the requirements of this chapter and all relevant rules

and regulations, it shall approve the registration. Any applicant who is denied approval registration may, within 20 days from the date of notification of such denial, request a hearing before the Department of State, which hearing shall be held within 20 days from the date of the request, unless the applicant requests a longer period in writing.

History.—s. 5, ch. 65-218; s. 6, ch. 67-219; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.

1496.06 Limitation on activities of charitable organizations.—No charitable organization subject to this chapter shall solicit funds from the public except for charitable purposes or expend funds raised for charitable purposes for noncharitable purposes.

History.—s. 6, ch. 65-218; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.

1496.07 Rules and regulations.—The Department of State shall have the power, and its duty shall be to promulgate rules and regulations and prescribe forms for registration or other purposes consistent with the specific requirements of this chapter and, after due notice to and consultation with representatives of charitable organizations and an opportunity for all such to be heard, to make effective such rules, regulations, forms and procedures and when necessary to hold hearings and make adjudications as provided in this chapter and make recommendations to the appropriate prosecuting attorney for enforcement of this chapter.

History.—s. 7, ch. 65-218; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.

1496.08 Information filed to become public records.—Registration statements and applications, reports, and all other documents and information required to be filed under this chapter or by the Department of State shall become public records in the office of the Department of State, and shall be open to the general public for inspection at such time and under such conditions as the Department of State may prescribe. In addition, the Department of State shall within 10 days after approval and renewal send to the Clerk of the Circuit Court in each county a list of registrants under this chapter which list shall be filed but not recorded.

History.—s. 8, ch. 65-218; s. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.

1496.09 Records to be kept by charitable organizations.—Every charitable organization subject to the provisions of this chapter shall, in accordance with the rules and regulations prescribed by the Department of State, keep true fiscal records, including but not limited to all income and expenses, within the purview of this chapter, as to its activities in Florida as may be required by this chapter in such form as will enable it accurately to provide the information required by this chapter. Upon demand, such records shall be made available to the Department of State.
State or an appropriate prosecuting attorney for inspection. Such records shall be retained for a period of at least 3 years after the end of the period of registration to which they relate.

History.—s. 3, ch. 65-218; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

1946.10 Reciprocal agreements.—The Department of State may enter into reciprocal agreements with the appropriate authority of any other state for the purpose of exchanging information with respect to charitable organizations. Pursuant to such agreements, the Department of State may accept information, services of a person other than a charitable organization, or that the proceeds of such solicitation or sale will be substantially similar to the information required under this chapter. The Department of State shall also grant exemption from the requirement for the filing of annual registration statement to charitable organizations organized under the laws of another state having their principal business outside the state whose funds are derived principally from sources outside the state and which have been granted exemption from the filing of registration statement by any other charitable organization and the professional solicitor or his agent, to believe that any other person sponsors or endorses such solicitation of contributions, sale of goods or services for charitable purposes or approves of such charitable purposes or a charitable organization connected therewith when such person has not given written consent to the use of his name for such purposes; any member of the board of directors or trustees of a charitable organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given his consent to the use of his name in said campaign.

(4) No person shall make any representation that he is soliciting contributions for or on behalf of a charitable organization or such solicitation of contributions, sale of goods or services for charitable purposes or approves of such charitable purposes or a charitable organization connected therewith when such person has not given written consent to the use of his name for such purposes; any member of the board of directors or trustees of a charitable organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given his consent to the use of his name in said campaign.

(5) No professional solicitor or his agent, servant, or employee shall solicit in the name of or on behalf of any charitable organization unless:

(a) Such solicitor has first obtained written authorization of the state or the appropriate prosecuting attorney for solicitation of contributions, or the solicitor has, in his application for registration required pursuant to s. 496.031(1), expressly stated his intention to make telephone solicitations and has attached to the application the proposed text of any such telephone solicitations and all such solicitations are made substantially in accordance with the proposed text.

(b) Such solicitor or his agent, servant, or employee carries such authorization with him when making solicitations and exhibits the same on request to persons solicited or police officers or other law enforcement officers or agents of the Department of State, or, if such solicitations are made by telephone, such solicitor has, in his application for registration required pursuant to s. 496.031(1), expressly stated his intention to make telephone solicitations and has attached to the application the proposed text of any such telephone solicitations and all such solicitations are made substantially in accordance with the proposed text.

(6) No person shall use the words "charity" or "charitable" as a part of its name, unless licensed or exempt under this chapter.

(7) A professional solicitor or his agent, servant, or employee shall not solicit any person for a charitable contribution without identifying himself as a professional solicitor to the person so solicited.

(8) A professional solicitor’s total fee shall not be in excess of 25 percent of the gross contributions which he solicits; all fund-raising costs shall be included in such gross contributions.

(9) Any organization registered and certified pursuant to this chapter shall not expend in excess...
of 25 percent of its gross contributions for fund-raising costs.

(10) No person shall, in connection with the solicitation of contributions or the sale of goods, magazines, newspaper advertising, or any other service, use the name "POLICE," "FIREFIGHTER," or "FIREMEN," unless properly authorized by a bona fide police or firefighter organization or police or fire department. Such authorization must bear the signatures of two bona fide members of the organization or department.

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(1) Any charitable organization or professional solicitor which has its principal place of business without the state, or which is organized under and by virtue of the laws of a foreign state, and which solicits contributions from people in this state, shall be subject to the provisions of this chapter and shall be deemed to have irrevocably appointed the Secretary of State as its agent upon whom may be served any summons, subpoena, subpoena duces tecum or other process directed to such charitable organization or professional solicitor or any partner, principal officer or director thereof in any action or proceeding brought under the provisions of this chapter.

(2) Service of such process upon the Secretary of State shall be made by personally delivering to and leaving with him a copy thereof at the capitol in Tallahassee. Such service shall be sufficient service provided that notice of such service and a copy of such process are forthwith sent to such charitable organization or professional solicitor by registered or certified mail with return receipt requested at its last address known.

496.13 Enforcement and penalties.—

(1) No charitable organization or professional solicitor which fails to file any registration application, statement, report, or other information required to be filed with the Department of State under this chapter as a prerequisite to registration shall engage in any of the activities permitted duly registered persons or organizations under the provisions of this chapter. No organization or professional solicitor shall engage in charitable solicitation without a current registration certificate or letter of exemption.

(2) The Department of State, upon its own motion or upon complaint of any person, may, if it has reasonable ground to suspect a violation, investigate any charitable organization or professional solicitor to determine whether such person or organization, or any agent, servant, or employee thereof, has violated the provisions of this chapter or has filed any application or other information required under this chapter which contains false or misleading statements. If the Department of State finds that any application or other information contains false or misleading statements, or that a registrant under this chapter, or an agent, servant, or employee thereof, has violated the provisions hereof, it may move to suspend or cancel such registration after notifying said registrant by registered or certified mail, return receipt requested, and affording an opportunity for hearing.

(3) The registration of any charitable organization or professional solicitor knowingly making a false or misleading statement in any registration application or statement, report, or other information required to be filed by the Department of State or this chapter shall be revoked or suspended.

(4) All proceedings under this chapter shall be conducted in accordance with the Administrative Procedure Act and all adjudications shall be subject to review and appeal as provided therein.

(5) In addition to the foregoing, any person who willfully and knowingly violates any provisions of this chapter, or who shall willfully and knowingly give false or incorrect information to the Department of State in filing statements or reports required by this chapter, whether such report or statement is verified or not, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for the first offense and for the second and any subsequent offense shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) In the event the Department of State or any prosecuting attorney shall have probable cause to believe that:

(a) Any charitable organization or professional solicitor is operating in violation of the provisions of this chapter or has knowingly and willfully made any false statements, report, or other information required to be filed by this chapter,

(b) Any charitable organization or professional solicitor has failed to file a registration statement or other information required by this chapter,

(c) There is employed or is about to be employed in any solicitation or collection of contributions for a charitable organization any device, scheme, or artifice to defraud or to obtain money or property by means of any false pretense, representation, or promise,

(d) The officers or representatives of any charitable organization or professional solicitor have refused or failed after notice to produce any records of such organization, or

(e) The funds raised by solicitation activities are not devoted or will not be devoted to the charitable purposes of the charitable organization,
such charitable organization or other person from continuing such violation, solicitation or collection, or engaging therein, or doing any acts in furtherance thereof and for such other relief as to the court seems appropriate.

(7) The Department of State or its designee may appear before any court of competent jurisdiction empowered to issue warrants of arrest in criminal cases and request the issuance of a warrant; and upon presentation of probable cause, said court shall issue a warrant directed to any sheriff, deputy sheriff, or police officer.

History.—s. 13, ch. 65-218; s. 9, ch. 67-205; ss. 10, 35, ch. 69-106; s. 450, ch. 71-136; s. 8, ch. 74-332; s. 4, ch. 76-162; s. 3, ch. 76-168; s. 185, ch. 77-104; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.

496.131 Applicability of ch. 67-205.—None of the provisions of chapter 67-205 shall apply to part II of chapter 617, scholarship plans.

History.—s. 10, ch. 67-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.

496.132 More stringent local provisions not preempted.—Chapter 74-332, Laws of Florida, shall not be construed to preempt any more stringent county or municipal provisions or to restrict local units of government from adopting more stringent provisions, and, in such case, such provisions shall be complied with if the registrant desires to solicit within the geographic district of the local unit of government.

History.—s. 9, ch. 74-332; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982.
CHAPTER 500

FOODS, DRUGS, AND COSMETICS

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500.02 Purpose of chapter.—This chapter is intended:

(1) To safeguard the public health and promote the public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit, flowing from intrastate commerce in food, drugs, devices, and cosmetics; and

(2) To provide legislation which shall be uniform, as provided in this chapter, and administered so far as practicable in conformity with the provisions of and regulations issued under the authority of the Federal Food, Drug and Cosmetic Act; and likewise uniform with the Federal Trade Commission Act, to the extent that it expressly prohibits the false advertisement of food, drugs, devices and cosmetics; and

(3) To promote thereby uniformity of such state and federal laws and their administration and enforcement, throughout the United States and in the several states.

500.03 Definitions of terms used in chapter.—For the purpose of this chapter:

(1) The term "department" means the Department of Agriculture and Consumer Services.

(2) The term "person" includes individual, partnership, corporation and association.

(3) The term "food" means:

(a) Articles used for food or drink for man or other animals;

(b) Chewing gum; and
(c) Articles used for components of any such article.

(4) The term "drug" means:
(a) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and
(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and
(c) Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and
(d) Articles intended for use as a component of any article specified in paragraphs (a), (b), or (c) but does not include devices or their components, parts, or accessories.

(5) The term "device," except when used in subsection (11) and in ss. 500.04(10), 500.11(6), 500.15(3) and 500.18(3), means instruments, apparatus and contrivances, including their components, parts and accessories, intended:
(a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
(b) To affect the structure or any function of the body of man or other animals.

(6) The term "cosmetic" means:
(a) Articles intended to be rubbed, poured, sprinkled, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and
(b) Articles intended for use as a component of any such articles, except that such term shall not include soap.

(7) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(8) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(9) The term "immediate container" does not include package liners.

(10) The term "labeling" means all labels and other written, printed, or graphic matters:
(a) Upon an article or any of its containers or wrappers; or
(b) Accompanying such article.

(11)(a) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof; but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such articles in the conduct of any food, drug or cosmetic establishment.

(b) The term "pesticide" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a "pesticide" within the meaning of the Florida Pesticide Laws.
The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

The term "food additive" means any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use, if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

(a) A pesticide chemical in or on a raw agricultural commodity; or
(b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or
(c) A color additive; or
(d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act (21 U.S.C. 451 and the following); and the Meat Inspection Act of March 4, 1907, (34 Stat. 1260), as amended and extended (21 U.S.C. 71 and the following).

The term "color additive" means a material which:

1. Is a dye pigment, or other substance, made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral or other source, or
2. When added or applied to a food, drug or cosmetic or to the human body or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto; except that such term does not include any material which has been or hereafter is exempt under the federal act.

The term "color" includes black, white and intermediate grays.

Nothing in paragraph (a) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

The term "drug wholesaler" means every person who acts as a jobber, wholesale merchant, or broker, or agent thereof, who sells or distributes for resale any drug as defined by the Florida Food, Drug and Cosmetic Law. However, this shall not apply to persons who sell only patent or proprietary preparations as defined in the Florida Pharmacy Law. Pharmacies, and pharmacists employed thereby, are specifically excluded from this definition.

The term "drug manufacturer" means and includes every person who prepares, derives, produces, compounds, or repackages any drug as defined by the Florida Food, Drug and Cosmetic Law. However, this shall not apply to manufacturers of patent or proprietary preparations as defined in the Florida Pharmacy Law. Pharmacies, and pharmacists employed thereby, are specifically excluded from this definition.

500.032 Declaration of policy and cooperation between departments in enforcement of chapter 500.—In order to more effectively utilize the agencies of the state, in the public interest and without unnecessary duplication and expense the provisions of this chapter shall be enforced by the Department of Agriculture and Consumer Services and the Department of Health and Rehabilitative Services as follows:

(1) The Department of Agriculture and Consumer Services shall be and is hereby charged with the administration and enforcement of the provisions of this chapter designed to prevent fraud, adulteration, misbranding or false advertising in the preparation, manufacture or sale of articles of food used for human consumption, and it is further charged to enforce the provisions of this chapter relating to the production, manufacture, transportation, and sale of foods used for man, as well as articles entering into and intended for use as an ingredient in the preparation of foods used for man;

(2) The Department of Health and Rehabilitative Services shall be and is hereby charged with the administration of the provisions of this chapter designed to prevent fraud, adulteration, misbranding or false advertising in the preparation, manufacture or sale of articles of drugs, devices and cosmetics and the said Department of Health and Rehabilitative Services is further charged to enforce the provision of this chapter relating to the production, manufacture, transportation and sale of drugs, devices and cosmetics as defined in this chapter;

(3) However, the specific delegation of authority granted above is to specifically place responsibility and should not be construed so as to cause the respective agencies to not cooperate each with the other by interchange of information and copies of reports where deemed advisable.

500.04 Certain acts prohibited.—The following acts and the causing thereof within the state are prohibited:

(1) The manufacture, sale or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.
(2) The adulteration or misbranding of any food, drug, device, or cosmetic.
(3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.
(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of ss. 500.12 or 500.16.
(5) The dissemination of any false advertisement.
(6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by s. 500.12.
(7) The giving of a guaranty or undertaking which guarantee or undertaking is false, except by a person who relied on a guaranty or undertaking to the same extent signed by, and containing the name and address of the person residing in the state from whom he received in good faith the food, drug, device, or cosmetic.
(8) The removal, disposal, or use of a detained or embargoed article or food processing equipment in violation of s. 500.06.
(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act, with respect to a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.
(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter.
(11) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under s. 500.16, or that such drug complies with the provisions of such section.
(12) The possession of any habit-forming, toxic, harmful or new drug in violation of s. 500.15.

History.--s. 3, ch. 19656, 1939; CGL 1940 Supp. 4151 (667); s. 2, ch. 57-167; cf. s. 1, ch. 70-994.

500.05 Injunction to restrain violations.—In addition to the remedies herein provided, the Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services, as appropriate, may apply to a Circuit Court for, and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of s. 500.04; irrespective of whether or not there exists an adequate remedy at law.

History.--s. 4, ch. 19656, 1939; CGL 1940 Supp. 4151(668); ss. 14, 19, 35, ch. 69-106; s. 418, ch. 77-147; cf. s. 500.32 Penalty for violations.

500.06 Embargoing, destroying, etc., of articles or processing equipment in violation of law or rule.—

(1) When a duly authorized agent of the department finds, or has probable cause to believe, that any food, food processing equipment, drug, device, or cosmetic is in violation of any provision of this chapter or rule adopted hereunder as to be dangerous, unwholesome, fraudulent, or insanitary, within the meaning of this chapter, he may issue and enforce a stop-sale, stop-use, removal, or hold-order which gives notice that such article or processing equipment is, or is suspected of being, in violation and has been detained or embargoed and warns all persons not to remove, use, or dispose of such article or processing equipment by sale or otherwise until permission for removal, use, or disposal is given by such agent or the court. It is unlawful for any person to remove, use, or dispose of such detained or embargoed article or processing equipment by sale or otherwise without such permission.

(2) When an article or processing equipment detained or embargoed under subsection (1) has been found by such agent to be in violation of law or rule, he shall, within a reasonable period of time after the issuance of such notice, petition the circuit court in whose jurisdiction the article or processing equipment is detained or embargoed for an order for condemnation of such article or processing equipment.

When such agent has found that an article or processing equipment so detained or embargoed is not in violation, he shall rescind the stop-sale, stop-use, removal, or hold-order.

(3) If the court finds that a detained or embargoed article or processing equipment is in violation, such article or processing equipment shall, after entry of the decree, be destroyed or made sanitary at the expense of the claimant thereof under the supervision of such agent; and all court costs, fees, and storage and other proper expenses shall be taxed against the claimant of such article or processing equipment or his agent. However, when the violation can be corrected by proper labeling of the article or sanitizing of processing equipment and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed or such processing equipment so sanitized, has been executed, the court may by order direct that such article or processing equipment be delivered to the claimant thereof for such labeling, processing or sanitizing under the supervision of an agent of the department. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article or processing equipment on representation to the court by the department that the article or processing equipment is no longer in violation of this chapter and that the expenses of such supervision have been paid.

(4) When the department or any of its authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound or contain any filthy, decomposed or putrid substances, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the department, or its authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

History.--s. 6, ch. 19656, 1939; CGL 1940 Supp. 4151(669); s. 18, ch. 59-302; ss. 14, 19, 35, ch. 69-106; s. 2, ch. 70-994.
500.07 Duty of prosecuting officer.—Each State Attorney, county attorney, or city attorney to whom the Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services or its designated agent reports any violation of this chapter, shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this chapter, except violations for sale or possession of drugs or devices which require a prescription, is reported to the Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services, either orally or in writing, in person or by attorney, with regard to such contemplated hearing.

History.—s. 7, ch. 1965-66, 1939; CGL 1940 Supp. 4151 (670); ss. 14, 19, 35, ch. 69-106; s. 419, ch. 77-147.

500.08 Minor violations not required to be reported.—Nothing in this chapter shall be construed as requiring the Department of Agriculture and Consumer Services or the Department of Health and Rehabilitative Services to report, for the institution of proceedings under this chapter, minor violations of this chapter, when it believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History.—s. 8, ch. 1965-66, 1939; CGL 1940 Supp. 4151 (671); ss. 14, 19, 35, ch. 69-106; s. 420, ch. 77-147.

500.09 The department may promulgate regulations.—When in the judgment of the department such action will promote honesty and fair dealing in the interest of consumers, the department with the advice and consent of the state chemist shall promulgate regulations fixing and establishing for any food or class of food under its common or usual name so far as practicable a reasonable definition and standard of identity, or reasonable standard of quality or fill of container, or reasonable sanitary regulations governing the manufacture, processing or handling of such food products. In the prescribing of any standard of quality for any canned fruit or canned vegetable, consideration shall be given and due allowance made for the differing characteristics of the several varieties of such fruit or vegetable. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department with the advice and consent of the state chemist shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated by the Secretary of the United States Department of Agriculture under authority conferred by s. 401 of the federal act.

History.—s. 9, ch. 1965-66, 1939; CGL 1940 Supp. 4151 (672); ss. 14, 35, ch. 69-106.

500.10 Food deemed adulterated.—A food is deemed to be adulterated:

1. (a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(b) If it bears or contains any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive, which is unsafe within the meaning of s. 500.13(1); or

(c) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of s. 408(a) of the federal act as amended or s. 500.13(1); or

(d) If it is or it bears or contains, any food additive which is unsafe within the meaning of s. 409 of the federal act as amended, or s. 500.13(1); provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under s. 408 of the federal act, or s. 500.13(1), and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of s. 500.13, and this paragraph, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or

(e) If it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(f) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(g) If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or has been fed upon the uncooked offal from a slaughter house, or

(h) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

2. (a) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

(b) If any substance has been substituted wholly or in part therefor; or

(c) If damage or inferiority has been concealed in any manner; or

(d) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

3. (a) If it is confectionery and it bears or contains any alcohol or non-nutritive article or substance except harmless coloring, harmless flavoring, harm-
Food deemed misbranded.—A food is deemed to be misbranded:

(1) If its labeling is false or misleading in any particular; provided, however, that corn meal shall not be considered misbranded because of its being labeled "Water Ground," where such corn meal so labeled shall have been ground on rocks having a diameter of not less than 42 inches and which revolve during the grinding of same at a speed not greater than 186 revolutions per minute.

(2) If it is offered for sale under the name of another food.

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the words "imitation" and, immediately thereafter, the name of the food imitated.

(4) If its container is so made, formed, or filled as to be misleading.

(5) If in package form, unless it bears a label containing:

(a) The name and place of business of the manufacturer, packer, or distributor;

(b) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided, that under this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the department.

(6) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms and in such manner as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by s. 500.09, unless:

(a) It conforms to such definition and standard; and

(b) Its label bears the name of the food specified in the definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring and coloring) present in such food.

(8) If it purports to be or is represented as:

(a) A food for which a standard of quality has been prescribed by regulations as provided by s. 500.09 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(b) A food for which a standard or standards of fill of container have been prescribed by regulation as provided by s. 500.09 and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(9) If it is not subject to the provisions of subsection (7), unless its label bears:

(a) The common or usual name of the food, if any there be; and

(b) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided, that, to the extent that compliance with the requirements of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department with the advice and consent of the state chemist.

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the department with the advice and consent of the state chemist.

(12) When soft drinks are offered for sale in sanitary returnable or nonreturnable containers, sealed or securely capped, impervious to contamination by leakage or contact with foreign substances, and, when the trade name, net content and declaration of artificial flavor or color, when used, appear on the principal display panel, which may be the cap, crown, lid, or side of the container of said drinks, and when the manufacturer, at least once every year and oftener when required by the department, files with said department an affidavit stating the trade names of such drinks manufactured by him and the territorial limits in the state within which said drinks are offered for sale, the provisions of this chapter requiring additional labeling and branding of said drinks shall not apply. However, nothing in this subsection shall in any manner otherwise restrict, modify, or impair the jurisdiction and authority of the department over said drinks as food products and the conditions pertaining to the manufacture of same.
agency shall engage in the business of manufacturing, processing, or packing food in any manner without first obtaining a food manufacturer's, processor's, and packer's permit from the department. The permit shall be issued upon application to the department on forms furnished by the department and upon conditions prescribed by regulations of the department governing the manufacturing, processing, or packing of food as may be necessary to protect the public health and promote public welfare by protecting the purchasing public from injury by merchandising deceit. Such permit shall be issued January 1, 1971 and be renewed annually thereafter on or before January 1.

(2) The department may suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended may at any time apply for the reinstatement of such permit, and the department shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(3) The state chemist or assistant state chemist or any officer or inspector duly designated by the department shall have access to any factory or establishment the operator of which holds a permit from the department, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

(4) The department shall promulgate regulations exempting from any labeling requirement of this chapter:
   (a) Small open containers of fresh fruits and fresh vegetables; and
   (b) Food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such food is not adulterated or misbranded under the provisions of this chapter upon removal from such processing, labeling, or repacking establishment.

500.121 Disciplinary procedures; retail food stores, food manufacturers, processors, or packers.—

(1) In addition to the suspension procedures provided in s. 500.12, the department may, after notice and hearing, impose a fine not exceeding $5,000 against any retail food store, food manufacturer, processor, or packer, which fine, when imposed and paid, shall be deposited by the department in the General Inspection Trust Fund. In the alternative, the department may revoke or suspend the permit of any such retail food store, food manufacturer, processor, or packer when it is satisfied that it has:
   (a) Violated any of the provisions of this chapter.
   (b) Violated or aided or abetted in the violation of any law of Florida governing or applicable to retail food stores, food manufacturers, processors, or packers, or any lawful rules or regulations of the department.
   (c) Knowingly committed, or been a party to, any material fraud, misrepresentation, conspiracy, collusion, trick, scheme, or device whereby any other person, lawfully relying upon the word, representation, or conduct of a retail food store, food manufacturer, processor, or packer, acts to his injury or damage.
   (d) Committed any act or conduct of the same or different character of that enumerated which constitutes fraudulent or dishonest dealing.

(2) Whenever any administrative order has been made and entered by the department imposing a fine pursuant to this section, said order shall specify the amount of fine and time limit for payment thereof, not exceeding 15 days, and, upon failure of the retail food store, food manufacturer, processor, or packer involved to pay the fine within said time, the permit of such retail food store, food manufacturer, processor, or packer shall become automatically suspended. Whenever any such administrative order of the department is sought to be reviewed by the offending retail food store, food manufacturer, processor, or packer in a court of competent jurisdiction, such administrative order shall become subject to any and all orders that may be entered by such court or courts, but, if the court proceedings should finally terminate in such administrative order of the department being upheld or not dismissed, the order shall, upon the filing with the department of a certified copy of the mandate or other order of the last court having to do with the matter in the judicial process, become immediately effective and shall then be carried out and enforced.

(3) In any court proceeding relating to administrative orders, the burden of proving violations of this chapter and of upholding administrative orders shall be with the department. History.—s. 1, ch. 72-73.

500.13 Addition of poisonous or deleterious substance to food.—

(1) Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive, shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of application of s. 500.10(1)(b) with respect to any food, unless there is in effect a regulation pursuant to subsection (2) limiting the quantity of such substance, and the use or intended use of such substance conform to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food shall not, by reason of bearing or containing such substance in accordance with the regulation, be considered adulterated within the meaning of s. 500.10(1)(a).

(2) The department, whenever public interest in the state so requires, is authorized to adopt, amend, or repeal regulations whether or not in accordance with regulations promulgated under the federal act, prescribing therein tolerances for any added poisonous or deleterious substances, for food additives, for pesticide chemicals in or on raw agricultural commodities or for color additives, including, but not