

State of Wisconsin



2013 Senate Bill 531

Date of enactment: **April 16, 2014**
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2013 WISCONSIN ACT 288

AN ACT *to renumber and amend* 452.15; *to amend* 452.01 (4), 452.025 (5) (b), 452.12 (3) and 452.14 (3) (intro.); and *to create* 440.03 (13) (bm), 452.01 (3p), 452.01 (4v), 452.05 (1) (h), 452.05 (1) (i), 452.07 (2), 452.12 (5) (d), 452.139 (3), 452.14 (2m), 452.14 (3) (o), 452.14 (3) (p), 452.14 (4r), 452.15 (2) and 452.25 of the statutes; **relating to:** eligibility for a broker's or salesperson's license or a time-share salesperson's certificate of registration following a criminal conviction, immunity for employing real estate brokers in certain actions, granting rule-making authority, and providing a penalty.

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

SECTION 1. 440.03 (13) (bm) of the statutes is created to read:

440.03 (13) (bm) Upon a request by the real estate examining board, the department may conduct an investigation to determine whether an individual seeking a determination by the real estate examining board under the rules promulgated under s. 452.07 (2) has an arrest or conviction record. In conducting an investigation under this paragraph, the department may require an individual to provide any information that is necessary for the investigation.

SECTION 2. 452.01 (3p) of the statutes is created to read:

452.01 (3p) "Crime" does not include a crime for which the individual has been pardoned; a crime for which the conviction has been reversed, set aside, or vacated; or a crime for which the conviction has been expunged under s. 973.015.

SECTION 3. 452.01 (4) of the statutes is amended to read:

452.01 (4) "Disciplinary proceeding" means a proceeding against one or more licensees or registrants in which the board may revoke, suspend, or limit a license or registration, reprimand a licensee or registrant, issue a private letter of warning to a licensee or registrant, or assess a forfeiture or require education or training under s. 452.14 (4m) or (4r).

SECTION 4. 452.01 (4v) of the statutes is created to read:

452.01 (4v) "Felony" means a felony under the laws of this state or a crime committed elsewhere that would be a felony if committed in this state. "Felony" does not include a felony for which the applicant has been pardoned; a felony for which the conviction has been reversed, set aside, or vacated; or a felony for which the conviction has been expunged under s. 973.015.

SECTION 5. 452.025 (5) (b) of the statutes is amended to read:

452.025 (5) (b) An application to renew a certificate of registration granted under this section shall, on or before the applicable renewal date specified under s. 440.08 (2) (a), be submitted with the applicable renewal fee determined by the department under s. 440.03 (9) (a)

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

on or before the applicable renewal date specified under s. 440.08 (2) (a) and a completed copy of the form under s. 452.05 (1) (i).

SECTION 6. 452.05 (1) (h) of the statutes is created to read:

452.05 (1) (h) If the board promulgates rules under s. 452.07 (2), create a form on which an individual applying for a determination under those rules may do all of the following:

1. State whether he or she has ever been convicted of a crime.

2. Identify the date of conviction for any crime described under subd. 1. and describe the nature and circumstances of the crime.

3. Sign his or her name to attest to the accuracy and truthfulness of the information under subds. 1. and 2. and to acknowledge the department's authority to conduct an investigation under s. 440.03 (13).

SECTION 7. 452.05 (1) (i) of the statutes is created to read:

452.05 (1) (i) Create a form on which an individual applying to renew a broker's or salesperson's license or a time-share salesperson's certificate of registration may do all of the following:

1. State whether he or she has been convicted of a crime since he or she last applied to renew the license or certificate or, for an initial renewal, since he or she initially applied for the license or certificate.

2. Identify the date of conviction for any crime described under subd. 1. and describe the nature and circumstances of the crime.

3. Sign his or her name to attest to the accuracy and truthfulness of the information under subds. 1. and 2. and to acknowledge all of the following:

a. The department's authority to conduct an investigation under s. 440.03 (13).

b. The board's authority to revoke the license or certificate under s. 452.14 (3) (o).

c. The board's authority to assess forfeitures under s. 452.14 (4r).

SECTION 8. 452.07 (2) of the statutes is created to read:

452.07 (2) The board may promulgate rules establishing a procedure that allows an individual who does not possess a broker's or salesperson's license or a time-share salesperson's certificate of registration to, without submitting a full application and without paying the fees applicable to applicants, apply to the board for a determination of whether the individual would be disqualified from obtaining a license or certificate due to his or her criminal record. A determination made under this subsection, with respect to criminal convictions reviewed by the board as part of the determination, is binding upon the board and the department if the individual subsequently applies for a license or certificate, unless there is informa-

tion relevant to the determination that was not available to the board at the time of the determination.

SECTION 9. 452.12 (3) of the statutes is amended to read:

452.12 (3) (a) ~~Each~~ Subject to s. 452.139 (3), each broker shall supervise, and is responsible for, the brokerage services provided on behalf of the broker by any broker, salesperson, or time-share salesperson who is an employee of the broker.

SECTION 10. 452.12 (5) (d) of the statutes is created to read:

452.12 (5) (d) At the time of renewal, each broker or salesperson who is an individual shall complete the form under s. 452.05 (1) (i).

SECTION 11. 452.139 (3) of the statutes is created to read:

452.139 (3) **LIABILITY FOR NEGLIGENT HIRING.** An employing broker that hires an individual who is licensed or registered under this chapter and who commits a crime under the laws of this state or another wrongful act may not be held civilly liable for hiring that individual in a claim brought for negligent hiring if, regardless of whether the employing broker conducted its own investigation, the employing broker relied on the investigations conducted by the department under s. 440.03 (13) or on any determination made by the board, including a determination under s. 452.07 (2) or 452.25.

SECTION 12. 452.14 (2m) of the statutes is created to read:

452.14 (2m) The board shall conduct disciplinary proceedings in accordance with the rules adopted under s. 440.03 (1).

SECTION 13. 452.14 (3) (intro.) of the statutes is amended to read:

452.14 (3) (intro.) ~~Disciplinary proceedings shall be conducted by the board according to rules adopted under s. 440.03 (1).~~ The board may revoke, suspend or limit any broker's, salesperson's, or time-share salesperson's license or registration, or reprimand the holder of the license or registration, if it finds that the holder of the license or registration has:

SECTION 14. 452.14 (3) (o) of the statutes is created to read:

452.14 (3) (o) Violated s. 452.25 (2) (a) or failed to pay any forfeiture assessed by the board under sub. (4r) for such a violation.

SECTION 14m. 452.14 (3) (p) of the statutes is created to read:

452.14 (3) (p) Been convicted of a felony that is a bar to licensure or registration under s. 452.25 (1) (a).

SECTION 16. 452.14 (4r) of the statutes is created to read:

452.14 (4r) The board may assess against an individual who is licensed or registered under this chapter a forfeiture of \$1,000 for a violation under s. 452.25 (2) (a).

SECTION 17. 452.15 of the statutes is renumbered 452.15 (1) and amended to read:

452.15 (1) ~~No~~ Except as otherwise provided in sub. (2), no license or certificate of registration may be issued under this chapter to any person whose license or certificate under this chapter has been revoked until the expiration of a period determined in each case by the board or, in the case of revocation under s. 452.17 (4) (a) 2., a period determined in each case by the board of not less than 5 years from the date the revocation became finally effective.

SECTION 18. 452.15 (2) of the statutes is created to read:

452.15 (2) Issuance of a license or certificate of registration to an individual whose license or certificate is revoked under s. 452.14 (3) (p) is subject to the provisions in s. 452.25 (1).

SECTION 19. 452.25 of the statutes is created to read:

452.25 Criminal convictions and disclosures. (1) FELONY CONVICTIONS. (a) Notwithstanding ss. 111.321, 111.322, and 111.335, and except as provided in pars. (b) to (e), no applicant who is an individual may be issued a broker's or salesperson's license or a time-share salesperson's certificate of registration if the applicant has been convicted of a felony.

(b) If an applicant has been convicted of a felony described under par. (a); the applicant has completed the confinement portion of his or her sentence, if the applicant is serving a bifurcated sentence, or has been released from prison to parole or released upon the completion of his or her sentence; and 3 years have elapsed since the date on which the confinement portion was completed or the applicant was released, the applicant may apply to the board for a determination as to whether the applicant is suitable to be granted a license or certificate.

(c) If an applicant applies for a determination under par. (b), the board may require the applicant to provide any information that is necessary for the investigation and shall make a determination by doing all of the following:

1. Reviewing any information relating to the felony.
2. Reviewing any supplemental information provided by the applicant bearing upon his or her suitability for licensure as a broker or salesperson or for registration as a time-share salesperson.
3. Considering all of the following factors:
 - a. The severity and nature of the felony.
 - b. The amount of time that has elapsed.
 - c. The number or pattern of felonies or other similar incidents that gave rise to the felony conviction.

d. The circumstances surrounding the felony that may have a bearing on whether the applicant might repeat the behavior that was the subject of the felony.

e. The relationship of the felony to real estate practice.

f. The applicant's activities since the felony, including employment, education, participation in treatment, payment of restitution, and any other factor that may be evidence of rehabilitation.

(d) With respect to a determination under par. (c), the applicant bears the burden of demonstrating his or her suitability for licensure or registration.

(e) If the board makes a determination under par. (c) to allow an applicant to be granted a broker's or salesperson's license or a time-share salesperson's certificate of registration, the applicant shall be granted the license or certificate if the applicant satisfies all other requirements for granting the license or certificate of registration.

(2) FALSE AFFIRMATIONS. (a) No person may intentionally submit any false information on a form created by the board under s. 452.05 (1) (h) or (i).

(b) No applicant may be issued an initial broker's or salesperson's license or time-share salesperson's certificate of registration, and no applicant may renew such a license or certificate, if the applicant has violated par. (a) and failed to pay any forfeiture assessed by the board under s. 452.14 (4r) for that violation.

SECTION 20. Initial applicability.

(1) **FELONY DISQUALIFICATION.**

(a) *Initial licenses and certificates.* The treatment of section 452.25 (1) (with respect to applications for an initial license or registration) of the statutes first applies to an initial license or registration under chapter 452 of the statutes that is issued on the effective date of this paragraph.

(b) *License and certificate renewals.* The treatment of section 452.25 (1) of the statutes first applies to an applicant who renews a license or registration under chapter 452 of the statutes on the effective date of this paragraph.

(2) **CRIMINAL CONVICTION DISCLOSURE FORM.** The treatment of sections 452.025 (5) (b), 452.05 (1) (i), and 452.12 (5) (d) of the statutes first applies to an applicant who renews a license or registration under chapter 452 of the statutes on the effective date of this subsection.

(3) **LICENSE AND CERTIFICATE REVOCATIONS.** The treatment of section 452.14 (3) (p) of the statutes first applies to a judgment of conviction entered on the effective date of this subsection.