



2013 SENATE BILL 457

December 20, 2013 - Introduced by Senators OLSEN, HARSDORF, SCHULTZ, GROTHMAN, LEHMAN and LASSA, cosponsored by Representatives KNUDSON, KOOYENGA, MURPHY, STEINEKE, STROEBEL, CZAJA, OHNSTAD, KAHL and NASS. Referred to Committee on Insurance and Housing.

1 **AN ACT** *to create* 452.01 (5n), 452.01 (5p) and 452.137 of the statutes; **relating**
2 **to:** cooperation of Wisconsin licensed real estate brokers with out-of-state real
3 estate brokers, salespersons, and time-share salespersons, powers of
4 out-of-state brokers, requiring the exercise of rule-making authority, and
5 providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Real Estate Examining Board (board) licenses real estate brokers in Wisconsin. Generally, no person may engage in real estate practice in the state without a broker's license issued by the board. The board also licenses real estate salespersons and registers time-share salespersons. A real estate salesperson is any person, other than a broker or a time-share salesperson, who is employed by a broker. A time-share salesperson is a person employed by a broker exclusively to sell time shares.

This bill authorizes limited real estate practice in Wisconsin by an out-of-state broker who is not licensed by the board, and for the broker's out-of-state salesperson or time-share salesperson, if the out-of-state broker enters into a cooperative agreement with a broker licensed by the board. Under the bill, the board is required to develop, by rule, the form and content of the cooperative agreement. The cooperative agreement must establish the terms of cooperation between an out-of-state broker and a licensed broker, establish the terms of the out-of-state broker's compensation, and provide that all client funds received in connection with

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a real estate transaction subject to the cooperative agreement be deposited in a trust account maintained by the licensed broker.

Under the bill, an out-of-state broker may not do any of the following, including as a party to a cooperative agreement:

1. Enter into a listing agreement concerning real estate located in Wisconsin.
2. For commission, money, or other thing of value, promote in Wisconsin the sale, exchange, purchase, option, rental, or leasing of real estate located in Wisconsin, including by posting signs.

Under the bill, a broker licensed by the board who is a party to a cooperative agreement with an out-of-state broker, and any licensed salesperson or time-share salesperson of the licensed broker, may not act under the cooperative agreement on behalf of a broker who is not a party to the cooperative agreement. Additionally, unless the parties agree otherwise, the out-of-state broker must submit all documents it receives, maintains, or generates in connection with a real estate transaction subject to the cooperative agreement to the licensed broker. The out-of-state broker must keep all such documents for at least three years after the date of closing or completion on a transaction, or, if the transaction does not close or is not completed, three years after the date on which the parties executed the cooperative agreement.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 452.01 (5n) of the statutes is created to read:

2 452.01 (5n) "Out-of-state broker" means a person who is not licensed under
3 this chapter and who is regularly and lawfully engaged in the real estate brokerage
4 business in another state, a territory or possession of the United States, or a foreign
5 country.

6 **SECTION 2.** 452.01 (5p) of the statutes is created to read:

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1 452.01 **(5p)** “Out-of-state salesperson” means a person who is not licensed
2 under this chapter and who is employed by an out-of-state broker. “Out-of-state
3 salesperson” includes a time-share salesperson employed by an out-of-state broker.

4 **SECTION 3.** 452.137 of the statutes is created to read:

5 **452.137 Cooperation with out-of-state brokers and salespersons. (1)**

6 DEFINITIONS. In this section:

7 (a) “Cooperative agreement” means the agreement established by the board
8 under sub. (4).

9 (b) “Licensed broker” means a broker who is licensed under this chapter.

10 (c) “Licensed salesperson” means a salesperson who is licensed under this
11 chapter.

12 (d) “Licensed time-share salesperson” means a time-share salesperson who is
13 licensed under this chapter.

14 **(2) OUT-OF-STATE BROKERS.** (a) Except as provided in par. (b), an out-of-state
15 broker may act as a broker in this state only if the out-of-state broker does all of the
16 following:

17 1. Enters into a cooperative agreement with a licensed broker and cooperates
18 with the licensed broker on all transactions subject to the cooperative agreement.

19 2. Submits to the licensed broker evidence that the out-of-state broker is
20 licensed in good standing to engage in real estate brokerage in a jurisdiction other
21 than this state.

22 (b) An out-of-state broker, including an out-of-state broker who is a party to
23 a cooperative agreement, may not do any of the following:

24 1. Enter into a listing agreement concerning real estate located in this state.

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1 2. For commission, money, or other thing of value, promote in this state the sale,
2 exchange, purchase, option, rental, or leasing of real estate located in this state,
3 including by posting signs on the property.

4 (c) An out-of-state broker who is a party to a cooperative agreement with a
5 licensed broker, and any out-of-state salesperson of the out-of-state broker, shall
6 comply with the laws of this state, and the out-of-state broker shall file with the
7 board an irrevocable consent that actions may be commenced against the
8 out-of-state broker in the proper court of any county in this state in which a cause
9 of action arises or the plaintiff resides, by the service of any process or pleading
10 authorized by the laws of this state on the board or any duly authorized employee.
11 The consent shall stipulate and agree that such service is valid and binding as due
12 service upon the out-of-state broker in all courts in this state. The consent shall be
13 duly acknowledged and, if made by a corporation, shall be authenticated by the
14 corporate seal.

15 (d) A licensed broker who is a party to a cooperative agreement with an
16 out-of-state broker, and any licensed salesperson or licensed time-share
17 salesperson of the licensed broker, may not act under the cooperative agreement on
18 behalf of a broker who is not a party to the cooperative agreement.

19 (e) 1. An out-of-state broker who is a party to a cooperative agreement with
20 a licensed broker shall maintain the originals or copies of all documents the
21 out-of-state broker receives, maintains, or generates in connection with any
22 transaction subject to the cooperative agreement, for at least 3 years after the date
23 of closing or completion of the transaction, or, if no closing or completion occurs, 3
24 years after the date on which the parties execute the cooperative agreement.

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1 2. An out-of-state broker who is a party to a cooperative agreement with a
2 licensed broker shall deposit with the licensed broker copies of all documents the
3 out-of-state broker is required to maintain under subd. 1., unless the out-of-state
4 broker and licensed broker agree in writing that the out-of-state broker is not
5 required to do so.

6 (f) No person may pay an out-of-state broker a commission, money, or other
7 thing of value for brokerage services unless the out-of-state broker is a party to a
8 cooperative agreement with a licensed broker.

9 (g) Notwithstanding s. 452.01 (2) (bm), no out-of-state broker may, for
10 commission, money, or other thing of value, show a property in this state that is
11 offered exclusively for rent unless that showing is authorized under a cooperative
12 agreement between the out-of-state broker and a licensed broker.

13 **(3) OUT-OF-STATE SALESPERSONS.** An out-of-state salesperson may act as a
14 salesperson or time-share salesperson in this state only if all of the following
15 conditions are met:

16 (a) The out-of-state broker who employs the out-of-state salesperson satisfies
17 all of the applicable requirements under sub. (2).

18 (b) The out-of-state salesperson works under the direct supervision of the
19 out-of-state broker.

20 (c) The out-of-state salesperson submits evidence to the licensed broker that
21 the out-of-state salesperson is licensed in good standing or is otherwise authorized
22 to act as a salesperson or time-share salesperson in a jurisdiction other than this
23 state.

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1 (d) In any transaction subject to the cooperative agreement, the out-of-state
2 salesperson represents only the out-of-state broker who is a party to the cooperative
3 agreement and with whom the out-of-state salesperson is employed.

4 (4) COOPERATIVE AGREEMENT. (a) The board shall, by rule, establish the form
5 and terms of the cooperative agreement.

6 (b) The cooperative agreement shall do at least all of the following:

7 1. Establish the terms of cooperation between the out-of state broker, any
8 out-of-state salesperson, and the licensed broker.

9 2. Establish the terms of the out-of-state broker's compensation.

10 3. Provide that all client funds, as defined in s. 452.13 (1) (a), that the
11 out-of-state broker and licensed broker receive in connection with a transaction
12 subject to the cooperative agreement shall be deposited in a trust account
13 maintained by the licensed broker.

14 (5) PENALTY. (a) Subject to the rules promulgated under s. 440.03 (1), the board
15 may conduct investigations and hold hearings to determine whether a person has
16 violated this section or a rule promulgated under this section.

17 (b) Notwithstanding s. 452.17 (3), any person who violates this section or a rule
18 promulgated under this section may be fined not more than \$5,000 for each violation.

19 **SECTION 4. Effective date.**

20 (1) This act takes effect on January 1, 2015.

21 (END)