



2005 ASSEMBLY BILL 722

October 3, 2005 – Introduced by Representatives MONTGOMERY, HINES, LAMB, HAHN, KRAWCZYK, GUNDERSON, TOWNSEND and OTT, cosponsored by Senator A. LASEE. Referred to Committee on Health.

1 **AN ACT** *to amend* 440.08 (2) (a) 56., 450.06 (title), 450.06 (1), 450.06 (2) (intro.)
2 and 450.06 (3); and *to create* 440.08 (2) (a) 56m., 450.065 and 450.11 (4) (a) 1m.
3 of the statutes; **relating to:** the licensure of pharmacies located outside the
4 state and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a pharmacist may not dispense prescribed drugs or devices except from a location that is licensed as a pharmacy by the pharmacy examining board (board). To get a license for a pharmacy, the person seeking the license must pay the required fee and submit an application that shows the floor plan of the pharmacy, specifies the location of the pharmacy, and gives the name and address of the person who owns and controls the pharmacy and the name of the managing pharmacist. The pharmacy location must also be inspected by the board and found to meet the board's requirements concerning floor design, minimum equipment, sanitation and storage space. Current law does not explicitly require an out-of-state pharmacy to be licensed in this state, although an attorney general's opinion states that an implied power to regulate out-of-state pharmacies that solicit orders from state residents may be inferred from current statutes. See 72 OAG 121, 122 (1983).

This bill explicitly prohibits a pharmacy that is located outside the state from routinely shipping, mailing, or otherwise delivering a prescription drug or device to persons in this state unless the pharmacy is licensed by the board. The bill requires an out-of-state pharmacy to meet the following requirements for licensure:

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1. The pharmacy must submit an application on a form provided by the board that shows the location of the pharmacy, the name and address of the person holding title and ownership control of the location of the pharmacy, and the name of the managing pharmacist of the pharmacy.

2. The owner of the pharmacy, or the managing pharmacist of the pharmacy if the pharmacy is not a sole proprietorship, must submit a statement in a form prescribed by the board that indicates that he or she knows the laws relating to the practice of pharmacy in this state.

3. The pharmacy must submit to the board evidence that the pharmacy is licensed in the state in which it is located.

4. The pharmacy must pay the application fee set in the statutes.

In addition, an out-of-state pharmacy licensed under the bill must establish a toll-free telephone number that allows a person in this state to contact the pharmacy during the pharmacy's regular hours of business and that is available for use by a person in this state at least 40 hours a week. The toll-free telephone number must be included on the label of a prescribed drug or device dispensed by the pharmacy to a person in this state.

Finally, the bill provides: 1) that the pharmacists working in an out-of-state pharmacy, including the managing pharmacist, may not be required to be licensed in this state; and 2) that an out-of-state pharmacy licensed under the bill may not be required to satisfy any requirements established in this state's statutes or by the board relating to the professional service area of a pharmacy or the minimum equipment requirements for a pharmacy.

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.** 440.08 (2) (a) 56. of the statutes is amended to read:

2 440.08 (2) (a) 56. Pharmacy, in-state: June 1 of each even-numbered year; \$56.

3 **SECTION 2.** 440.08 (2) (a) 56m. of the statutes is created to read:

4 440.08 (2) (a) 56m. Pharmacy, out-of-state: June 1 of each even-numbered
5 year; \$56.

6 **SECTION 3.** 450.06 (title) of the statutes is amended to read:

7 **450.06** (title) **Pharmacy Pharmacies located in this state; licensure.**

8 **SECTION 4.** 450.06 (1) of the statutes is amended to read:

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1 450.06 (1) No pharmacist may dispense at any location ~~which~~ in this state that
2 is not licensed as a pharmacy by the board. No person in this state may use or display
3 the title “pharmacy”², “drugstore”², “apothecary,” or any other title, symbol, or
4 insignia having the same or similar meanings, except for a place of practice which
5 is licensed under this section as a pharmacy by the board.

6 **SECTION 5.** 450.06 (2) (intro.) of the statutes is amended to read:

7 450.06 (2) (intro.) The board shall issue a license to operate a pharmacy at a
8 specific location in this state if:

9 **SECTION 6.** 450.06 (3) of the statutes is amended to read:

10 450.06 (3) No pharmacy located in this state may be opened or kept open for
11 practice following a change of ownership or change of location unless the pharmacy
12 is licensed for the new owner or at the new location, notwithstanding any remaining
13 period of validity under the pharmacy’s license under the previous owner or at the
14 previous location.

15 **SECTION 7.** 450.065 of the statutes is created to read:

16 **450.065 Out-of-state pharmacies; licensure.** (1) No pharmacy that is in
17 another state may ship, mail, or otherwise deliver a prescribed drug or device to
18 persons in this state unless the pharmacy is licensed under sub. (2).

19 (2) The board shall issue a license to a pharmacy that is located outside this
20 state if the pharmacy does all of the following:

21 (a) Applies on a form provided by the board that shows all of the following:

22 1. The location of the pharmacy.

23 2. The name and address of the person holding title and ownership control of
24 the location.

25 3. The name of the managing pharmacist of the pharmacy.

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1 (b) Submits a statement in a form prescribed by the board from the owner of
2 the pharmacy or, if the pharmacy is not a sole proprietorship, from the managing
3 pharmacist of the pharmacy that indicates that the owner or managing pharmacist,
4 whichever is applicable, knows the laws relating to the practice of pharmacy in this
5 state.

6 (c) Submits evidence satisfactory to the board that it is licensed in the state in
7 which it is located.

8 (d) Pays the fee under s. 440.05 (1).

9 **(3)** A pharmacy that applies for a license under sub. (2) may not be required
10 to comply with any provision in this chapter or any rule promulgated under this
11 chapter relating to the professional service area of a pharmacy or the minimum
12 equipment requirements for a pharmacy.

13 **(4)** (a) Notwithstanding s. 450.03, a pharmacist employed in a pharmacy
14 licensed under this section is not required to be licensed under this chapter.

15 (b) Notwithstanding s. 450.09, a pharmacy licensed under this section is not
16 required to be under the control of a managing pharmacist licensed under this
17 chapter.

18 **(5)** A pharmacy licensed under this section shall provide a toll-free telephone
19 number that allows a person in this state to contact the pharmacy during the
20 pharmacy's regular hours of business and that is available for use by a person in this
21 state for not less than 40 hours per week.

22 **SECTION 8.** 450.11 (4) (a) 1m. of the statutes is created to read:

