

of said sections and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

SECTION 7. This act shall take effect October 1, 1947.

Approved August 5, 1947.

No. 515, A.]

[Published August 12, 1947.]

### CHAPTER 522.

AN ACT to create 136.19 to 136.36 of the statutes, relating to business opportunity brokers, providing penalties, and making an appropriation.

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

136.19 to 136.36 of the statutes are created to read:

136.19 DEFINITIONS. Unless the context otherwise requires, as used in sections 136.19 to 136.36:

- (1) "Board" means the Wisconsin real estate brokers' board.
- (2) "Business opportunity broker" means any person, firm or corporation, not excluded by subsection (3).

(a) Who for another, and for commission, money or other thing of value, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of any business, its good will, inventory, fixtures or an interest therein; or

(b) Who is engaged wholly or in part in the business of selling business opportunities or good will of an existing business or who is engaged wholly or in part in the business of buying and selling, exchanging or renting of any business, its good will, inventory, fixtures or an interest therein.

(3) The term "business opportunity broker" does not include:

(a) Receivers, trustees, administrators, executors, guardians, or other persons, appointed by or acting under the judgment or order of any court; or,

(b) Public officers while performing their official duties; or,

(c) Any bank, trust company, building and loan association, or any land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in

the transaction of business within the scope of its corporate powers as provided by law; or real estate brokers holding a license issued by the Wisconsin real estate brokers' board; or,

(d) Employes of persons, companies or associations enumerated in paragraphs (a), (b) and (c) when engaged in the specific performance of their duties as such employes.

(4) "Business opportunity salesman" means anyone who is employed by a business opportunity broker to perform any act authorized by sections 136.19 to 136.36 to be performed by a business opportunity broker.

136.20 **BROKERS LICENSED.** No person, firm or corporation shall engage in or follow the business or occupation of, or advertise or hold himself or itself out as or shall act temporarily or otherwise as a business opportunity broker or business opportunity salesman in this state, without first procuring a license therefor as provided in sections 136.19 to 136.36. Licenses shall be granted only to persons who are trustworthy and competent to transact the business of a business opportunity broker or business opportunity salesman in such a manner as to safeguard the interests of the public, and only after satisfactory proof thereof has been presented to the board.

136.21 **BROKERS' BOARD; DUTIES, MEETINGS, HEARINGS.** (1) The board shall receive applications for, and issue licenses to business opportunity brokers and business opportunity salesmen as provided in sections 136.19 to 136.36 and shall administer the provisions of said sections.

(2) The board may hold meetings, hearings or investigations anywhere in the state and any such hearings or investigations may be conducted by any member of the board, the secretary or by any duly authorized employe of the board.

136.22 **APPLICATIONS FOR LICENSE; CONTENTS.** (1) Any person desiring to act as a business opportunity broker or business opportunity salesman in this state shall file with the board an application for a license therefor. The form of the application shall be prescribed by the board, and shall set forth:

- (a) The kind of license desired;
- (b) The name and address of the applicant; if the applicant is a firm, the name and address of each member thereof; if the applicant is a corporation, the name and address of each of its officers;
- (c) The place or places, including the town, village or city,

street number and county where the business is to be conducted, and the manner in which such place of business is designated;

(d) The business or occupation theretofore engaged in by the applicant, or, if a firm, by each member thereof, or if a corporation, by each officer thereof, for a period of at least 2 years immediately preceding the date of such application;

(e) Such further information as the board may reasonably require to enable it to determine whether an applicant, including each member of the firm, or each officer of the corporation, is competent and trustworthy to transact the business of a business opportunity broker or salesman in such manner as to safeguard the interests of the public.

(2) In determining competency, the board shall require proof that the applicant for a business opportunity broker's license or a business opportunity salesman's license has a fair knowledge of the English language, a fair understanding of the general purposes and general legal effects of bills of sale, chattel mortgages, conditional sales contracts, the provisions of the bulk sales law, leases, and a general and fair understanding of the obligations between principal and agent as well as of the provisions of sections 136.19 to 136.36.

#### 136.23 APPLICATIONS, VERIFICATIONS, FEES, EXEMPTIONS. (1)

The application shall be verified by the applicant; if made by a firm it shall be verified by at least 2 members thereof; if made by a corporation it shall be verified by the president and secretary thereof. Application for license as business opportunity broker shall be accompanied by the affidavit of 2 persons who are citizens and real estate owners in the county in which the applicant resides or has his place of business, certifying that the applicant is trustworthy and competent. Application for license as business opportunity salesman shall be accompanied by the affidavit of his employer, if employed, certifying that the applicant is trustworthy and competent.

(2) Each application for a business opportunity broker's license shall be accompanied by a license fee of \$10 and for a business opportunity salesman's license by a fee of \$5 for the calendar year ending on the June 30 thereafter. Unless the application is withdrawn before the board has made any investigation thereon, neither the fee, nor any part thereof, shall be returned to the applicant.

(3) In the case of applications for renewals of licenses the board may dispense with such of the matters contained in sec-

tion 136.22 (1) as it deems unnecessary in view of prior applications.

(4) (a) Any licensed business opportunity salesman may at any time during the calendar year for which he has been licensed make application upon a form provided by the board for transfer to the employment of another licensed broker. The fee for such transfer shall be \$1 payable at the time the application therefor is filed.

(b) The suspension or revocation of a license issued to a broker shall automatically suspend the license of every salesman employed by such broker at the time of the suspension or revocation of such broker's license. Such salesman may apply for transfer to some other licensed broker by complying with the provisions of sections 136.19 to 136.36, provided such salesman is not a party to the activities causing the suspension or revocation of the license of his broker.

136.24 LICENSES; EXPIRATION, CORPORATE LICENSE, BROKERS LIABILITY, ROSTER OF BROKERS. (1) A license issued by the board shall entitle the holder thereof to act as a business opportunity broker, or if the application is for a business opportunity salesman's license, to act as a business opportunity salesman in this state up to and including June 30 following issuance of such license.

(2) If the licensee is a corporation, the license issued to it shall entitle the president thereof or such other officer as may be designated by such corporation, to act as a business opportunity broker. For each other officer who desires to act as a business opportunity broker in behalf of such corporation, an additional license shall be applied for and issued, for which the annual fee is \$10 for a business opportunity broker's license. No license as a business opportunity salesman shall be issued to any officer of a corporation nor to a member of a copartnership to whom a license was issued as a business opportunity broker. If the licensee is a copartnership, the license issued to it shall entitle one member thereof to act as a business opportunity broker, and for each other member of the copartnership who desires to act as a business opportunity broker, an additional license shall be applied for and issued, for which the annual fee is \$10 for a business opportunity broker's license.

(3) Each business opportunity broker is responsible for the acts of any of his or its salesmen while acting as his or its agents.

(4) The board shall from time to time prepare and publish in convenient form the names of all business opportunity brokers and salesmen licensed under sections 136.19 to 136.36. It shall include in such publication the names of all business opportunity brokers and salesmen whose licenses have been revoked at any time within one year prior to the issue thereof.

136.25 INVESTIGATIONS, REVOCATION OF LICENSE. (1) The board may on its own motion make investigations and conduct hearings in regard to the action of any business opportunity broker or business opportunity salesman, or any person, firm or corporation who it has reason to believe is acting or has acted in either such capacity within this state, and may make findings, after a hearing held on 10 days' notice, whether such person, firm or corporation has acted as a business opportunity broker or salesman. The findings are subject to review as provided in section 136.32.

(2) The board, on its own motion, or upon a written complaint duly signed and verified by the complainant, may suspend the license of a business opportunity broker or salesman in the manner and for the causes hereinafter provided. The business opportunity broker or salesman so charged shall be given at least 10 days' notice of such proceedings. The board may revoke the license of a business opportunity broker or salesman if he has:

(a) Made a material misstatement in the application for such license;

(b) Made any substantial misrepresentation with reference to a transaction injurious to a seller or purchaser wherein he acts as agent;

(c) Made any false promises of a character such as to influence, persuade or induce the seller or purchaser to their injury or damage;

(d) Pursued a continued and flagrant course of misrepresentation or made false promises through agents or salesmen or advertising;

(e) Acted for more than one party in a transaction without the knowledge of all parties for whom he acts;

(f) Accepted a commission or valuable consideration as a business opportunity salesman for the performance of any of the acts specified in this chapter, from any person except his employer;

(g) Represented or attempted to represent a business oppor-

tunity broker other than the employer, without the express knowledge and consent of the employer;

(h) Failed, within a reasonable time, to account for or remit any moneys coming into his possession which belong to another person;

(i) Demonstrated untrustworthiness or incompetency to act as a business opportunity broker or salesman in such manner as to safeguard the interests of the public;

(j) Paid or offered to pay a commission or valuable consideration to any person for acts or services in violation of the provisions of sections 136.19 to 136.36;

(k) Been guilty of any other conduct, whether of the same or a different character from that specified herein, which constitutes improper, fraudulent or dishonest dealing; or

(l) Violated any provision of sections 136.19 to 136.36.

(3) If a broker is a company it is sufficient cause for the suspension or revocation of a broker's license that any officer, director or trustee of the company, or in the case of a partnership, if any member thereof, or anyone who has financial interest in or is in any way connected with the operation of a business brokerage business, has been guilty of any act or omission which would be cause for refusing a broker's license to such person as an individual.

(4) A copy of the complaint, together with notice of suspension of the license, if ordered by the board, shall forthwith be served upon the business opportunity broker or salesman complained against. Such service may be by personal service or by mailing same to his last-known business address. If the complaint is against a salesman a copy of the complaint and notice shall also be served upon the broker for whom he is acting. The person so served shall file his answer thereto with the board within 10 days after such service and also serve a copy of such answer on the complainant. The board shall thereupon set the matter for hearing as promptly as possible and within 30 days after the date of filing of the complaint. Either party may appear at such hearing in person or by attorney or agent.

136.26. DENIAL OR REVOCATION OF LICENSE. PROCEDURE. (1) No order denying or revoking a license shall be made until after a public hearing or hearings held before the board, or before any member thereof, or before any duly authorized employe whose report has been adopted by the board. Such hearing or hearings shall be held in the county wherein the applicant for

a license resides or wherein the business opportunity broker complained of or whose salesman complained of has his place of business. In the event that the broker or salesman is a non-resident, the hearing shall be held at such place as the board designates.

(2) At least 10 days prior to the date of hearing, the board shall send written notice of the time and place of such hearing to the applicant for a license or to the complainant and to the party complained against and to their respective attorneys or agents of record by mailing same to the last known address of such persons. The testimony presented and the proceedings at such hearing shall be taken in shorthand and preserved as the records of the board. As soon thereafter as possible, and within 90 days after the date of filing a complaint, the board shall make its findings and determination thereon and shall send a copy thereof to each interested party.

**136.27 FEE SPLITTING.** No licensed broker shall pay a commission or any part thereof for performing any of the acts specified in sections 136.19 to 136.36 to any person who is not a licensed broker or a licensed salesman under the provisions of this chapter or who is not regularly engaged in the business opportunity brokerage business in another state.

**136.28 LIMITATION ON ACTIONS FOR COMMISSIONS.** No person, firm or corporation engaged in the business or acting in the capacity of a business opportunity broker or business opportunity salesman within this state shall bring or maintain an action in the courts of this state for the collection of a commission or compensation for the performance of any of the acts mentioned in this chapter without alleging and proving that such person, firm or corporation was a duly licensed business opportunity broker or business opportunity salesman at the time the alleged cause of action arose.

**136.29 NONRESIDENT BROKERS.** (1) A nonresident of this state may become a business opportunity broker or a business opportunity salesman by conforming to all of the provisions of sections 136.19 to 136.36. Such nonresident broker shall maintain an active place of business in this state.

(2) The board may recognize in lieu of the affidavit required to accompany an application for license, the license issued to a nonresident broker or salesman in such other state, upon payment of a license fee and the filing by the applicant with the

board of a certified copy of the applicant's license issued by such other state.

(3) Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of the state in which a cause of action may arise in which the plaintiff resides, by the service of any process or pleading authorized by the laws of this state, on the board, any member thereof, or any duly authorized employe. Such consent shall stipulate and agree that such service of such process or pleading is valid and binding as due service upon said applicant in all courts in this state. Said consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by the seal of such corporation.

(4) Duplicate copies of any process or pleadings shall be served upon the board or its duly authorized employe. One copy shall be filed in the office of the board and the other immediately forwarded by registered mail to the main office of the applicant against whom said process or pleadings are directed. No default in any such proceeding or action shall be taken except when it appears by affidavit of the secretary of the board or any duly authorized employe that a copy of the process or pleading was mailed to the defendant as herein required. No judgment by default shall be taken in any action or proceeding within 20 days after the date of mailing of such process or pleading to the nonresident defendant.

136.30 EVIDENCE, POWER TO OBTAIN. (1) The board may subpoena and compel the attendance and testimony of witnesses within this state, and the production of books, papers and documents. Each member of the board and its duly authorized representatives may administer oaths to witnesses.

(2) If any person refuses to comply with any subpoena issued hereunder or to testify to any manner (matter) regarding which he may lawfully be interrogated, the circuit court of any county or the judge thereof, on application of any member of the board, shall issue an order requiring such person to comply with such subpoena and to testify, or either. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(3) The board may also take depositions in the manner for the taking of depositions in actions pending in circuit court.

(4) Each witness who appears before the board pursuant to its subpoena, order or request, shall be paid the fees and mileage provided by law for witnesses in courts of record. Only wit-

nesses appearing for and on behalf of the board shall be paid from the funds deposited pursuant to section 20.575, upon vouchers approved by the president and secretary of the board. The fees and mileage of all other witnesses shall be paid by the party demanding their attendance.

136.31 INELIGIBILITY. When the license of a person, firm, or corporation has been revoked, the board may refuse to consider the application of such person, firm, or corporation for a new license for 2 years after the date of such revocation. After 2 years from the date of such revocation, the board shall rule on such application for a new license.

136.32 COURT REVIEW. (1) The action of the board in refusing to grant a license or in revoking a license hereunder is subject to review by writ of certiorari brought in the circuit court of the county in which the broker or applicant has his or its place of business or if the applicant is a nonresident, in the circuit court of Dane county. The action of the board shall stand until otherwise directed by said court or by the supreme court upon appeal.

(2) If any section, subsection, sentence, clause or phrase of sections 136.19 to 136.36 is for any reason held unconstitutional such decision shall not affect the validity of the remaining provisions of said sections.

136.33 PENALTIES. Any person, firm, or corporation who engages in or follows the business or occupation of, or advertises or holds himself or itself out as or acts temporarily or otherwise as a business opportunity broker or business opportunity salesman in this state without first having obtained a license therefor as required and provided by this chapter, or who otherwise violates any provisions of sections 136.19 to 136.36, is guilty of a misdemeanor and shall be punished by a fine of not less than \$25 nor more than \$200 or by imprisonment in the county jail for not less than 10 days nor more than 6 months or by both such fine and imprisonment.

136.34 COMPENSATION PRESUMED. In any prosecution for violation of sections 136.19 to 136.36 proof of facts otherwise established that a person, firm or corporation acted as a business opportunity broker or business opportunity agent or business opportunity salesman is prima facie proof that compensation therefor was received or promised.

136.35 CERTIFICATIONS AS EVIDENCE. (1) Copies of all documents, orders, resolutions and certificates made, executed or

issued by the board, and of all papers filed in its office, when certified by the secretary or assistant secretary of the board, under its official seal, shall be received in evidence in all cases in like manner and with the same effect as the originals.

(2) The certificate of the secretary or assistant secretary of the board to the effect that a specified individual, copartnership or corporation is not or was not on a specified date the holder of a business opportunity broker's license or business opportunity salesman's license, or that a specified license was not in effect on a date specified, and the certificate of the secretary or assistant secretary of the board as to the issuance, suspension, or revocation of any such license, or as to the filing or withdrawal of any application therefor, or as to the existence or nonexistence thereof, is prima facie evidence of the facts therein stated for all purposes in any action or proceeding in the courts of this state.

136.36 DISPOSITION OF MONEY COLLECTED. All money collected as license fees under the provisions of sections 136.19 to 136.35 shall be paid within one week after receipt into the general fund and used to carry out the provisions of sections 136.19 to 136.36 as provided in section 20.575.

Approved August 5, 1947.

No. 522, A.]

[Published August 13, 1947.

### CHAPTER 523.

AN ACT to amend 174.09 of the statutes, relating to the amount of the dog license tax to be paid to the state and the amount of the county dog license fund.

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

174.09 of the statutes is amended to read:

174.09 (1) The dog license taxes so paid to the county treasurer shall be kept in a separate account and shall be known as the "dog license fund" and shall be appropriated and disbursed for the purposes and in the manner following: Within 30 days after receipt of the same the county treasurer shall pay into the state treasury 5 per cent of the minimum tax as provided for under section 174.05 of all dog license taxes which shall have been received by the county treasurer.