

1991 Assembly Bill 677

Date of enactment: **April 20, 1992**

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1991 WISCONSIN ACT 207

AN ACT *to repeal* 446.04 (5) (c) and 452.11 (2); and *to amend* 449.05 (1) (b), 449.05 (2), 449.06 (2), 452.11 (title), 452.11 (1) and 452.11 (3) and (4) of the statutes, **relating to:** the prohibition on chiropractor advertising of fixed prices for variable services, the requirements for licensure as an optometrist and the requirements for nonresident real estate licenses (suggested as remedial legislation by the department of regulation and licensing).

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of regulation and licensing and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of this bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

SECTION 1. 446.04 (5) (c) of the statutes is repealed.

NOTE: This provision repeals the prohibition on advertising of fixed prices for variable services by a chiropractor; the prohibition is confusing and difficult to explain to consumers. Another prohibition in s. 446.04 (5) (a), stats., barring the use of any advertising which deceives or misleads the public is broader and sufficient to include the advertising of fixed prices for variable services.

SECTION 2. 449.05 (1) (b) of the statutes is amended to read:

449.05 (1) (b) Unless he or she presents proof, satisfactory to the examining board, that ~~he or she is 18 years of age or older and~~, subject to ss. 111.321, 111.322 and 111.335, he or she does not have an arrest or conviction record;

NOTE: This amendment eliminates the age requirement for taking the optometry examination because the requisite optometric training usually places the applicant over the age of 18 years.

SECTION 3. 449.05 (2) of the statutes is amended to read:

449.05 (2) Any person who ~~has been admitted is~~ licensed in good standing to practice optometry in another state, having substantially similar requirements and granting equal privileges to residents of Wisconsin, may be issued a certificate in the discretion of the examining board upon passing an examination in pathology and practical optometry, payment of the fee specified in s. 440.05 (1) and production of a certificate showing that the person has passed an examination in such other state and satisfactory evidence that the person has actually practiced there for 5 years.

NOTE: The amendment clarifies that a person who is licensed in another state with requirements substantially similar to those of Wisconsin and who has practiced optometry for 5 years may be considered for licensure, if the license from the other state is current and unencumbered by any disciplinary limitation.

SECTION 4. 449.06 (2) of the statutes is amended to read:

449.06 (2) Every practicing optometrist shall display in a conspicuous place, at the entrance of his or her office, the name of the person so practicing therein and shall keep his the certificate of registration conspicuously displayed in his that place of business so that it can easily be seen and read.

NOTE: The amendment deletes gender-specific language.

SECTION 5. 452.11 (title) of the statutes is amended to read:

452.11 (title) Nonresident applicants and licensees.

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SECTION 6. 452.11 (1) of the statutes is amended to read:

452.11 (1) A nonresident may become a broker, salesperson or time-share salesperson by conforming to all the provisions of this chapter, ~~except that a nonresident broker shall maintain an active place of business in the state in which the broker holds a license. Nonresident brokers may not employ brokers, salespersons or time-share salespersons in this state.~~

NOTE: This amendment equalizes the regulatory treatment of resident and nonresident real estate brokers, salespersons and time-share salespersons in response to an opinion of the attorney general [77 OAG 109 (1988)] that held that certain differential treatment of resident and nonresident licensees violated the privileges and immunities clause of the U.S. constitution. In particular, the nonresident licensee no longer will have to maintain an active place of business in the state in which the person was licensed and will be allowed to employ brokers, salespersons or time-share salespersons in Wisconsin. In addition, resident licensees who become nonresident licensees must file an irrevocable consent to service on the department of regulation and licensing as valid and binding service on the person.

SECTION 7. 452.11 (2) of the statutes is repealed.

NOTE: This provision repeals an obsolete statute authorizing the department of regulation and licensing to recognize a license issued by another state and filed with the department, in lieu of an affidavit, because all applicants for many years have submitted verified applications and the meaning and content of the affidavit referred to in s. 452.11 (2), stats., is no longer known.

SECTION 8. 452.11 (3) and (4) of the statutes are amended to read:

452.11 (3) Every nonresident applicant, and every resident licensee who becomes a nonresident, shall file

with the department an irrevocable consent that actions may be commenced against the applicant or licensee in the proper court of any county of the state in which a cause of action arises or in which the plaintiff resides, by the service of any process or pleading authorized by the laws of this state on the department or any duly authorized employee. The consent shall stipulate and agree that such service is valid and binding as due service upon the applicant or licensee in all courts in this state. The consent shall be duly acknowledged and, if made by a corporation, shall be authenticated by the corporate seal.

(4) ~~Duplicate copies of any~~ Any process or pleading under this section shall be served in duplicate upon the department or its duly authorized employee. One copy shall be filed with the department and the other immediately forwarded by registered certified mail to the ~~main office of the applicant~~ nonresident licensee against whom the process or pleading is directed at the last address provided to the department by the nonresident licensee. No default in any such proceeding or action may be taken unless it appears by affidavit of the secretary or any duly authorized employee that a copy of the process or pleading was mailed to the ~~defendant~~ nonresident licensee as required in this subsection. No judgment by default may be taken in any action or proceeding within 20 days after the date of mailing the process or pleading to the nonresident ~~defendant~~ licensee.

NOTE: The amendment changes service of process on a nonresident broker or salesperson from registered mail to certified mail addressed to the last address furnished to the department of regulation and licensing by the person rather than to the main office of the applicant for a license.