

SENATE BILL 371

An Act to amend 452.01 (2) (intro.), (a), (b) and (d), 452.01 (3e) and 452.137 (2); and to create 452.01 (2) (h), 452.01 (3) (h) and 452(5m) (d) of the statutes; relating to: the role and definition of a real estate broker. (FE) 1997

12-03. S. Introduced by Senators Welch, Wineke, Drzewiecki, Darling, Cowles and Rosenzweig; cosponsored by Representatives Sykora, Hanson, Green, Goetsch, Kreibich, Schafer, Meyer, Ward, Gunderson, Vrakas, Duff, Handrick, Porter, Freese and Johnsrud.

12-03. S. Read first time and referred to committee on Economic Development, Housing and Government Operations 365

12-30. S. Fiscal estimate received. 1998

02-18. S. Public hearing held.

02-26. S. Executive action taken.

03-04. S. Report introduction and adoption of Senate amendment 1 recommended by committee on Economic Development, Housing and Government Operations, Ayes 4, Noes 0 by committee on Economic Development, Housing and Government Operatio473

03-04. S. Report passage as amended recommended by committee on Economic Development, Housing and Government Operations, Ayes 4, Noes 0473

03-04. S. Available for scheduling.

03-19. S. Read a second time 533

03-19. S. Senate amendment 1 adopted 533

03-19. S. Ordered to a third reading 533

03-19. S. Rules suspended 533

03-19. S. Read a third time and passed 533

03-19. S. Ordered immediately messaged 539

03-25. A. Received from Senate 744

03-25. A. Read first time and referred to committee on Rules 744

04-02. A. Failed to concur in pursuant to Senate Joint Resolution 1 786

04-21. A. Revived pursuant to Senate Joint Resolution 47.

Vote Record

Assembly Committee on Housing

Date: April 29, 1998
 Moved by: Young Seconded by: Morris-Tatum
 AB: _____
 AB: _____ SB: 371 Clearinghouse Rule: _____
 AJR: _____ SJR: _____ Appointment: _____
 A: _____ SR: _____ Other: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- | | |
|---------------------------------------|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input type="checkbox"/> Adoption | <input checked="" type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrency |
| | <input type="checkbox"/> Confirmation |

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Carol Owens, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Steven Foti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Daniel Vrakas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Steve Wieckert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Johnnie Morris-Tatum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. John La Fave	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Leon Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tammy Baldwin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 9 0 0 0



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DAVE STARK, GRI, President

WILLIAM MALKASIAN, CAE, Executive Vice President

TO: All Assembly Representatives
FROM: Michael Theo and Richard Staff
DATE: April 30, 1998
RE: SB 371 - Definition of a Real Estate Broker

Distribution OKED by
Scott R. [Signature]

The Wisconsin REALTORS Association (WRA) strongly supports SB 371, regarding changes to the definition of a real estate broker. The bill passed the Senate Economic Development, Housing and Government Operations Committee, the full Senate, and the Assembly Housing Committee with unanimous support. There is no known opposition to this bill.

SB 371 consists of a number of technical clarifications to sections in the existing real estate license law, (Wis. Stats. Chapter 452), which has caused confusion with and questions from consumers, regulators and licensees in the past. Each revision is consistent with current Department of Regulation and Licensing (DRL) policy. The clarifications are as follows:

- 1. Defining "pattern of sales":** Section one defines the term "pattern of sales." Chapter 452 has long required any person who engages in a pattern of sales of real estate to obtain a real estate license. Unfortunately, because the term has never been defined, many circumstances have arisen where the seller, (typically a small developer or contractor), has not known if the seller was required to be licensed. The bill creates a definition that is consistent with past DR&L policy. Furthermore, because the definition is stated to be a presumptive standard, if the definition would result in an undue hardship in any individual case, the DRL would have some flexibility in applying the definition.
- 2. Promoting "sales" requires a license:** Section two clarifies that a real estate license is required to promote the sale of real estate, for another person, for a commission. This section also makes it clear that persons who publish real estate ads, whether in newspapers, magazines, in real estate websites, etc., are not obligated to be licensed, so long as they only publish information provided to them by the seller or the seller's agent.
- 3. Legal practice is exempt:** Section three provides a clarification that an attorney who is advising a client regarding the client's legal rights in a real estate transaction, is not required to obtain a real estate license. This clarification is necessary because there can be some similarities between the services and advice provided by a real estate licensee and a real estate attorney when they share a single client.

- Over -

4. **Clarify agency relationships with clients:** Similar to section three, section clarifies that a broker may provide advice to a client within the scope of the licensee's expertise as a real estate broker or salesperson. This section addresses concerns some licensees have voiced regarding recent changes to Wisconsin's real estate agency law. These licensees mistakenly believed that Wisconsin's agency laws restrict their ability to provide real estate related advice to their clients. The section confirms that real estate licensees can appropriately provide advice to their clients, within the scope of the licensee's real estate expertise.

Amendment

In order to insure that the revisions made to Chapter 452 in this bill does not inadvertently imply that an attorney would need to obtain a real estate license to represent a client in a real estate transaction, the State Bar has suggested an amendment. Senator Welch as agreed and has had the amendment drafted. We fully support this change.

Conclusion

We believe the license law clarifications provided in SB 371 are consistent with efforts over the past several sessions to reduce the potential of misunderstandings or miscommunications between real estate agents and the public, to the mutual benefit of both. We urge your support.



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: April 29, 1998

TO: REPRESENTATIVE CAROL OWENS, CHAIRPERSON, AND MEMBERS
OF THE ASSEMBLY COMMITTEE ON HOUSING

FROM: Mary Matthias, Senior Staff Attorney

SUBJECT: 1997 Senate Bill 371, Relating to the Role and Definition of a Real Estate
Broker

This memorandum describes 1997 Senate Bill 371, relating to the role and definition of a real estate broker. The Bill was introduced on December 3, 1997, by Senator Welch and others; cosponsored by Representative Sykora and others. The Bill was referred to the Senate Committee on Economic Development, Housing and Government Operations which recommended passage of the Bill, as amended by Senate Amendment 1, by a vote of Ayes, 4; Noes, 0. On March 19, 1998, the Senate adopted Senate Amendment 1 to the Bill by a voice vote and passed the Bill, as amended, on a voice vote.

In this memorandum, "the Bill" refers to the Bill as amended by Senate Amendment 1.

1. Definition of "Broker"

Current law sets forth the definition of "broker" for the purposes of ch. 452, Stats., "Real Estate Practice." Under current law, "broker" means any person (other than a person specifically excluded by statute, as set forth in Section 2., below) who:

- (a) For another, and for commission, money or other thing of value, negotiates or offers or attempts to negotiate a sale, exchange, purchase or rental of an interest or estate in real estate;
- (b) Is engaged wholly or in part in the business of selling real estate to the extent that a pattern of real estate sales is established, whether or not such real estate is owned by such person;
- (d) For another and for commission, money or other thing of value, negotiates or offers or attempts to negotiate a sale,

exchange, purchase or rental of any business, its goodwill, inventory, fixtures or an interest therein; or

(e) Is engaged wholly or in part in the business of selling business opportunities or goodwill of an existing business or is engaged wholly or in part in the business of buying and selling, exchanging or renting of any business, its goodwill, inventory, fixtures or an interest therein.

(f) For another, and for commission, money or other thing of value, negotiates or offers or attempts to negotiate a sale, exchange or purchase of a time share.

(g) Is engaged wholly or in part in the business of selling time shares to the extent that a pattern of sales is established, whether or not the time shares are owned by such person.

[s. 452.01 (2), Stats.]

The Bill makes the following changes to the definition of broker:

- The Bill amends item (b), above, to specify that five sales of real estate in one year or 10 sales of real estate in five years is presumptive evidence of a pattern of sales.
- The Bill adds to the definition of real estate broker a person who “for another, and for a commission, money or other thing of value, promotes the sale, exchange, purchase, option, rental or leasing of real estate or business opportunities.” The Bill specifies, however, that a person who only publishes or disseminates verbatim information provided by another person is *not* a broker.

2. Persons and Entities Excluded From the Definition of Broker

Current law specifically ***excludes*** all of the following from the definition of “broker” for the purposes of ch. 452, Stats., “Real Estate Practice”:

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

(b) Public officers while performing their official duties.

(c) Any bank, trust company, savings bank, savings and loan association, insurance company, 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.

(d) Employees of persons enumerated in pars. (a) to (c) and (f) when engaged in the specific performance of their duties as such employes.

(e) Any custodian, janitor, employe or agent of the owner or manager of a residential building who exhibits a residential unit therein to prospective tenants, accepts applications for leases and furnishes such prospective tenants with information relative to the rental of such unit, terms and conditions of leases required by the owner or manager, and similar information.

(f) Any credit union which negotiates loans secured by real estate mortgages or any licensee under ch. 138 which negotiates loans secured by real estate mortgages or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan, secured or to be secured by mortgage or other transfer of or encumbrance on real estate.

(g) A person registered as a mortgage banker under s. 224.72 who does not engage in activities described under sub. (2).

[s. 452.01 (3), Stats.]

The Bill creates the following two *additional exclusions* from the definition of real estate broker:

- Attorneys licensed to practice in this state while acting within the scope of their attorney's license.
- An employe of an attorney described above if all of the following are true:

The employe's activities are directly supportive of the attorney's provision of legal services to the attorney's client.

The employe's activities are activities that the attorney may perform while acting within the scope of their attorney's license.

The employe is under the direction and supervision of the attorney.

3. Definition of "Negotiate"

Current law provides that, for the purposes of ch. 452, Stats., "Real Estate Practice," "negotiate" means to act as an intermediary between the parties to a transaction, including doing any of the following:

(a) Facilitating or participating in the parties' discussion of the terms of a contract or agreement concerning a transaction.

(b) Completing, when requested by a party, appropriate department-approved forms or other writings to document the party's proposal consistent with the party's intent.

(c) Presenting to a party the proposals of other parties to the transaction and informing the party receiving a proposal of the advantages and disadvantages of the proposal.

[s. 452.01 (5m), Stats.]

The Bill adds the following item to the definition of "negotiate":

- Providing advice to the client regarding those matters within the scope of the knowledge, skills and training required for licensing as a broker or salesperson under this chapter [ch. 452, Stats., Real Estate Practice].

4. Duties of Brokers to Clients

Current law sets forth a list of duties which a broker has to a client. [s. 452.133 (2), Stats.] One of those duties is to loyally represent the client's interest by placing the client's interests ahead of the interests of any other party, unless loyalty to a client would violate certain other duties of the broker to the parties to a transaction. Current law also specifies that a broker who represents more than one client in a transaction owes the duties set forth under s. 452.133 (2), Stats., to each client in the transaction.

The Bill clarifies the current law by specifying that a broker who represents more than one client in a transaction may not place the interests of any client ahead of the interest of another client in the transaction.

If you have questions or would like further information on this subject, please contact me at the Legislative Council Staff offices. My direct telephone number is 266-0932.

MM:rv;jt;wu



Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
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MADISON, WISCONSIN 53708-8935
(608) 266-2112

**TESTIMONY OF THE DEPARTMENT OF REGULATION & LICENSING AND THE
REAL ESTATE BOARD ON SENATE BILL 371**

Before the Assembly Committee on Housing

April 29, 1998

Good afternoon, Chairperson Owens and members of the committee.

I am Cletus Hansen, Administrator of the Division of Business Licensure and Regulation in the Department of Regulation & Licensing. I am testifying to express the support of both the Department and the Real Estate Board for Senate Bill 371.

This bill clarifies several definitions in the real estate practice act and it clarifies a provision relating to providing services to more than one client. The definitional clarifications are helpful both for making decisions as to who must be licensed, and also as to who is not required to be licensed. This is especially true of the provision that states that 5 sales in 1 year or 10 sales in 5 years is presumptive evidence of a pattern of sales.

Over the past 20 years since I have been with the Department I have received many telephone calls from attorneys, real estate developers and other consumers, asking what specific number of sales of ones own real estate requires a person to have a real estate license or to utilize the services of a real estate broker. There is no number in the statutes, administrative rules or case law. Allegedly, the Real Estate Examining Board many years ago told people that more than 3 sales in a given year was a pattern of sales.

Regulatory Boards

Accounting; Architects; Landscape Architects; Professional Geologists; Professional Engineers; Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers; Marriage and Family Therapists and Professional Counselors; and Veterinary.

The numbers in this bill are fair and reasonable. For example, if a person were leaving this state and wanted to personally dispose of several pieces of real estate, such as a residence, a vacation cottage and a business or two, the person could do so without hiring a broker. On the other hand, sales beyond such incidental sales more truly fall under the term "being in the business of selling real estate."

Admittedly, the Legislature cannot write provisions which clearly answer every question about which activities require a license and which do not. This is one of the most difficult aspects of administering a license law. However, the provisions in this bill will help.

If you have any questions, I will try to answer them or obtain the answers for you.

Thank you.



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3-13-98

MAR 12 1998

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DAVE STARK, GRI, President

WILLIAM MALKASIAN, CAE, Executive Vice President

TO: All Legislators
FROM: Michael Theo and Richard Staff
DATE: March 11, 1998
RE: SB 371 - Definition of a Real Estate Broker

The Wisconsin REALTORS Association (WRA) strongly supports SB 371, regarding changes to the definition of a real estate broker. The bill was voted out of the Senate Economic Development, Housing and Governmental Operations Committee with unanimous support. There is no known opposition to this bill.

SB 371 consists of a number of technical clarifications to sections in the existing real estate license law, (Wis. Stats. Chapter 452), which has caused confusion with and questions from consumers, regulators and licensees in the past. Each revision is consistent with current Department of Regulation and Licensing (DRL) policy. The clarifications are as follows:

- 1. Defining "pattern of sales":** Section one defines the term "pattern of sales." Chapter 452 has long required any person who engages in a pattern of sales of real estate to obtain a real estate license. Unfortunately, because the term has never been defined, many circumstances have arisen where the seller, (typically a small developer or contractor), has not known if the seller was required to be licensed. The bill creates a definition that is consistent with past DR&L policy. Furthermore, because the definition is stated to be a presumptive standard, if the definition would result in an undue hardship in any individual case, the DRL would have some flexibility in applying the definition.
- 2. Promoting "sales" requires a license:** Section two clarifies that a real estate license is required to promote the sale of real estate, for another person, for a commission. This section also makes it clear that persons who publish real estate ads, whether in newspapers, magazines, in real estate websites, etc., are not obligated to be licensed, so long as they only publish information provided to them by the seller or the seller's agent.
- 3. Legal practice is exempt:** Section three provides a clarification that an attorney who is advising a client regarding the client's legal rights in a real estate transaction, is not required to obtain a real estate license. This clarification is necessary because there can be some similarities between the services and advice provided by a real estate licensee and a real estate attorney when they share a single client.

- Over -

4. Clarify agency relationships with clients: Similar to section three, section clarifies that a broker may provide advice to a client within the scope of the licensee's expertise as a real estate broker or salesperson. This section addresses concerns some licensees have voiced regarding of recent changes to Wisconsin's real estate agency law. These licensees mistakenly believed that Wisconsin's agency laws restrict their ability to provide real estate related advice to their clients. The section confirms that real estate licensees can appropriately provide advice to their clients, within the scope of the licensee's real estate expertise.

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2-11-98

FEB 10 1998

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DAVE STARK, GRI, President

WILLIAM MALKASIAN, CAE, Executive Vice President

TO: All Legislators
FROM: Michael Theo and Rick Staff
DATE: February 10, 1998
RE: SB 371 - Definition of a Real Estate Broker

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FISCAL ESTIMATE

JOA-2048 (R10/94)

- ORIGINAL UPDATE
 CORRECTED SUPPLEMENTAL

1997 Session

LRB or Bill No./Adm. Rule No.

Amendment No.

SB 371
(97-2580/6)

Subject

The role and definition of a real estate broker

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- | | | |
|--|---|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues | <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues | |
| <input type="checkbox"/> Create New Appropriation | <input type="checkbox"/> Decrease Costs | |

Local: No local government costs

- | | | |
|--|--|--|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenue
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of local government units affected:
<input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities
<input type="checkbox"/> Counties <input type="checkbox"/> Others _____
<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
| 2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Decrease Revenue
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | |

Fund Sources Affected

- GPR FED PRO PRS SEG-S

Affected Ch. 20 Appropriations

20.165 (1) (g)

Assumptions Used in Arriving at Fiscal Estimate

This bill neither increases nor decreases department revenues or expenditures.

Long-Range Fiscal Implications

Agency/Prepared by:

Department of Regulation and Licensing
Patricia C. McCormack
(608) 267-2435

Authorized Signature

Patricia C. McCormack

Date

12/19/97

FISCAL ESTIMATE WORKSHEET

1997 Session

Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATE
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.	Amendment No.
SB 371	

DOA-2047 (R10/94)

Subject
 The role and definition of a real estate broker

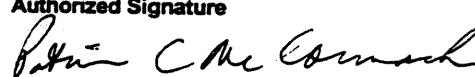
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$	\$ -
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$ 0	\$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Costs	Decreased Costs
GPR Taxes	\$	\$ -
GPR Earned		
FED		-
PRO/PRS		
SEG/SEG-S		-
TOTAL State Revenues	\$ 0	\$

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	
NET CHANGE IN REVENUES	\$ 0	

Agency/Prepared by:
 Department of Regulation and Licensing
 Patricia C. McCormack

Authorized Signature


Date
 12/19/97