

2005 Senate Bill 429

Date of enactment: **April 10, 2006**  
Date of publication\*: **April 20, 2006**

## 2005 WISCONSIN ACT 297

AN ACT *to repeal* 449.05 (1) (d), 449.08 (2) (d), 449.13, 449.15, 449.17 (6), 449.18 (3) and (4), 449.18 (6) (intro.) and 449.18 (7); *to renumber* 449.03 (2); *to renumber and amend* 449.05 (1) (intro.), 449.05 (1) (b), 449.05 (1) (c), 449.05 (2), 449.06 (2), 449.17 (3), 449.17 (4), 449.17 (7), 449.18 (1), 449.18 (2) (intro.), 449.18 (2) (a), 449.18 (2) (b), 449.18 (2) (c), 449.18 (4m), 449.18 (6) (a), 449.18 (6) (b) and 449.18 (6) (c); *to consolidate, renumber and amend* 449.08 (2) (intro.) and (a); *to amend* 71.45 (4), 440.05 (intro.), 440.08 (2) (a) (intro.), 449.03 (title), 449.04 (1), 449.04 (2) (intro.), 449.04 (2) (a), 449.04 (2) (b), 449.04 (2) (c), 449.06 (1), 449.17 (2), 449.18 (5), 449.19, 961.39 (intro.), 961.39 (2) and 961.39 (3) (a); *to repeal and recreate* 449.06 (title); and *to create* 449.02 (3), 449.055 (2), 449.055 (5), 449.055 (6), 449.06 (2m), 449.17 (1), 449.17 (1m), 449.17 (8) (title), 449.18 (1) (a), (b) and (c), 449.18 (2) (title), 449.18 (2) (e), 449.18 (6) (title) and 449.18 (6) (am) (intro.) of the statutes; **relating to:** the regulation of optometrists, providing an exemption from emergency rule procedures, and granting rule-making authority.

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

**SECTION 1.** 71.45 (4) of the statutes is amended to read:

71.45 (4) NET BUSINESS LOSS CARRY-FORWARD. Insurers computing tax under this subchapter may subtract from Wisconsin net income any Wisconsin net business loss sustained in any of the next 15 preceding taxable years to the extent not offset by Wisconsin net business income of any year between the loss year and the taxable year for which an offset is claimed and computed without regard to sub. (2) (a) 8. and 9. and this subsection and limited to the amount of net income, but no loss incurred for a taxable year before taxable year 1987 by a nonprofit service plan of sickness care under ch. 148, or dental care under s. 447.13 or prepaid optometric service plans under s. 449.15 may be treated as a net business loss of the successor service insurer under ch. 613 operating by virtue of s. 148.03; or 447.13 or 449.15.

**SECTION 2.** 440.05 (intro.) of the statutes, as affected by 2005 Wisconsin Act 25, is amended to read:

**440.05 Standard fees.** (intro.) The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 444.03, 444.11, 446.02 (2) (c), 447.04 (2) (c) 2., 449.17 (1m) (d), and 449.18 (2) (d):

**SECTION 3.** 440.08 (2) (a) (intro.) of the statutes is amended to read:

440.08 (2) (a) (intro.) Except as provided in par. (b) and in ss. 440.51, 442.04, 444.03, 444.11, 448.065, 447.04 (2) (c) 2., 449.17 (1m) (d), and 449.18 (2) (d), the renewal dates and renewal fees for credentials are as follows:

**SECTION 4.** 449.02 (3) of the statutes is created to read:

449.02 (3) This section does not apply to a person who practices optometry under the supervision of an optometrist licensed under this chapter. The examining

\* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

board shall promulgate rules specifying the conditions for supervision required under this subsection.

**SECTION 5.** 449.03 (title) of the statutes is amended to read:

**449.03** (title) ~~Rule-making; enforcement~~ **Enforcement.**

**SECTION 6.** 449.03 (2) of the statutes is renumbered 449.03.

**SECTION 7.** 449.04 (1) of the statutes is amended to read:

449.04 (1) Licenses to engage in the practice of optometry shall be issued only to persons who pass an examination approved or conducted by the examining board. An applicant who qualifies under s. 449.05 (4) may take any examination approved or administered by the examining board upon payment of the fee specified in s. 440.05 (1).

**SECTION 8.** 449.04 (2) (intro.) of the statutes is amended to read:

449.04 (2) (intro.) The examination shall ~~include a written and practical examination, shall~~ reasonably relate to the skills likely to be needed for an applicant to practice optometry in this state at the time of examination and shall seek to determine the applicant's preparedness to exercise such skills. ~~In regard to the written examination, the~~ The examination shall test knowledge regarding general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents and therapeutic pharmaceutical agents, including the treatment of adverse reactions to such pharmaceutical agents, and knowledge regarding the removal of foreign bodies from an eye or from an appendage to the eye. The examination shall also test knowledge of state laws and administrative rules regarding the practice of optometry. The examining board may do any of the following:

**SECTION 9.** 449.04 (2) (a) of the statutes is amended to read:

449.04 (2) (a) Prepare, administer, and grade the examination;

**SECTION 10.** 449.04 (2) (b) of the statutes is amended to read:

449.04 (2) (b) Approve in whole or in part an examination prepared, administered, and graded by the national board of examiners in optometry; or another examination provider approved by the examining board.

**SECTION 11.** 449.04 (2) (c) of the statutes is amended to read:

449.04 (2) (c) Approve and administer an examination prepared and graded by or under the direction of the national board of examiners in optometry or another examination provider approved by the examining board.

**SECTION 12.** 449.05 (1) (intro.) of the statutes is renumbered 449.05 (intro.) and amended to read:

**449.05 Qualification** ~~Qualifications~~ **for examination.** (intro.) No person shall be examined by the board unless all of the following are satisfied:

**SECTION 13.** 449.05 (1) (b) of the statutes is renumbered 449.05 (1m) and amended to read:

449.05 (1m) ~~Unless he or she~~ The person presents proof satisfactory to the examining board that, subject to ss. 111.321, 111.322, and 111.335, he or she does not have an arrest or conviction record;

**SECTION 14.** 449.05 (1) (c) of the statutes is renumbered 449.05 (2m) and amended to read:

449.05 (2m) ~~Unless the~~ The person has graduated from an accredited college of optometry approved and recognized by the examining board; ~~and.~~

**SECTION 15.** 449.05 (1) (d) of the statutes is repealed.

**SECTION 16.** 449.05 (2) of the statutes is renumbered 449.055 (intro.) and amended to read:

**449.055 Endorsement.** (intro.) ~~Any~~ The examining board may issue a license and certificate of registration to a person who is licensed in good standing to practice optometry in another state, having that has 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 if all of the following conditions are satisfied:~~

(1) The person has passed an examination in pathology and practical optometry, payment of.

(3) The person pays 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.

(4) The person submits satisfactory evidence that the person has actually practiced there in the other state for 5 years.

**SECTION 17.** 449.055 (2) of the statutes is created to read:

449.055 (2) The person passes an examination that tests knowledge of state and federal laws and administrative rules and regulations regarding the practice of optometry.

**SECTION 18.** 449.055 (5) of the statutes is created to read:

449.055 (5) The person satisfies the requirements under s. 449.05.

**SECTION 19.** 449.055 (6) of the statutes is created to read:

449.055 (6) The person has completed the study specified in ss. 449.17 (1m) (b) and 449.18 (2) (a) 2. and passes the examinations specified in ss. 449.17 (1m) (c) and 449.18 (2) (a) 3.

**SECTION 20.** 449.06 (title) of the statutes is repealed and recreated to read:

**449.06** (title) **Renewal; continuing education.**

**SECTION 21.** 449.06 (1) of the statutes is amended to read:

449.06 (1) Persons practicing optometry shall, on or before the applicable renewal date specified under s. 440.08 (2) (a), register with the department and pay the applicable renewal fee specified under s. 440.08 (2) (a), and provide evidence satisfactory to the examining board that he or she has complied with the rules promulgated under sub. (2m).

**SECTION 22.** 449.06 (2) of the statutes is renumbered 449.065 and amended to read:

**449.065 Display of registration.** 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 the certificate of registration issued by the examining board conspicuously displayed in that place of business so that it can easily be seen and read.

**SECTION 23.** 449.06 (2m) of the statutes is created to read:

449.06 (2m) The examining board shall promulgate rules requiring a person who is issued a license to practice optometry to complete, during the 2-year period immediately preceding the renewal date specified in s. 440.08 (2) (a), not less than 30 hours of continuing education. The rules shall include requirements that apply only to optometrists who are allowed to use topical ocular diagnostic pharmaceutical agents under s. 449.17 or who are allowed to use therapeutic pharmaceutical agents or remove foreign bodies from an eye or from an appendage to the eye under s. 449.18.

**SECTION 24.** 449.08 (2) (intro.) and (a) of the statutes are consolidated, renumbered 449.08 (2) and amended to read:

449.08 (2) Unprofessional advertising includes ~~without limitation because of enumeration:~~ (a) Advertising advertising professional superiority or the performance of professional services in a superior manner;

**SECTION 25.** 449.08 (2) (d) of the statutes is repealed.

**SECTION 26.** 449.13 of the statutes is repealed.

**SECTION 27.** 449.15 of the statutes is repealed.

**SECTION 28.** 449.17 (1) of the statutes is created to read:

449.17 (1) **APPLICABILITY.** An optometrist may use topical ocular diagnostic pharmaceutical agents only if the optometrist establishes a plan specified in sub. (2) and if one of the following applies:

(a) The examining board initially issues a license to practice optometry to the optometrist on or after the effective date of this paragraph .... [revisor inserts date].

(b) The department issued a certificate to the optometrist under s. 449.17, 2003 stats.

(c) The examining board issues a certificate under sub. (1m) to an optometrist issued a license to practice optometry before the effective date of this paragraph .... [revisor inserts date].

**SECTION 29.** 449.17 (1m) of the statutes is created to read:

449.17 (1m) **LICENSES ISSUED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION ....** [REVISOR INSERTS DATE]. (a) The examining board shall certify an optometrist to use topical ocular diagnostic pharmaceutical agents if the optometrist was issued a license to practice optometry before the effective date of this paragraph .... [revisor inserts date], and the optometrist satisfies the education requirements under par. (b) and successfully completes an examination under par. (c).

**SECTION 30.** 449.17 (2) of the statutes is amended to read:

449.17 (2) **PLAN.** Topical ocular diagnostic pharmaceutical agents may be used only by optometrists who have established a plan ~~approved by the secretary after consultation with the examining board and the medical examining board~~ for the referral of patients who experience adverse reactions from the application of such agents to appropriate medical services.

**SECTION 31.** 449.17 (3) of the statutes is renumbered 449.17 (1m) (c) and amended to read:

449.17 (1m) (c) ~~Topical ocular diagnostic pharmaceutical agents may be used only by~~ The examining board may issue certificates under par. (a) only to optometrists who successfully complete an examination approved or conducted by the examining board on the subject of general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents, including the treatment of ~~any~~ adverse reactions ~~that may occur to~~ such pharmaceutical agents. The examination shall be prepared or approved by the ~~department in consultation with the examining board, the medical examining board and the pharmacy examining board.~~ The department examining board shall periodically review the validity, reliability, and appropriateness of the examination. ~~In regard to the examination, the department~~ The examining board may do any of the following:

1. Prepare, administer, and grade the examination;
2. Approve in whole or in part an examination prepared, administered, and graded by the national board of examiners in optometry ~~or by the optometry examining board;~~ or another examination provider approved by the examining board.
3. Approve and administer an examination prepared and graded by or under the direction of the national board of examiners in optometry or another examination provider approved by the examining board.

**SECTION 32.** 449.17 (4) of the statutes is renumbered 449.17 (1m) (b) and amended to read:

449.17 (1m) (b) In addition to the requirements of ~~sub. (3), under par. (c),~~ the examining board may issue certificates under par. (a) only to optometrists who ~~wish to use topical ocular diagnostic pharmaceutical agents~~ shall successfully complete 60 classroom hours of study in general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical

ocular diagnostic pharmaceutical agents. At least 30 of the 60 classroom hours of study shall be in ocular pharmacology and shall emphasize the systemic effects of and reactions to pharmaceutical agents, including the treatment of any adverse reactions that may occur. The course of study shall be offered by an institution approved by the ~~secretary~~ examining board and accredited by a regional or professional accrediting organization which is recognized by the ~~council on post-secondary accreditation and the U.S. office~~ Council for Higher Education Accreditation or its successor or the federal department of education, and shall be completed prior to entering the examination required by ~~sub. (3)~~ under par. (c).

**SECTION 33.** 449.17 (6) of the statutes is repealed.

**SECTION 34.** 449.17 (7) of the statutes is renumbered 449.17 (1m) (d) and amended to read:

449.17 (1m) (d) No fee may be charged for a certificate issued under this ~~section~~ subsection. A certificate issued under this ~~section~~ subsection or s. 449.17, 2003 stats., remains in effect while the optometrist's license to practice optometry remains in effect unless the certificate is suspended or revoked by the ~~department~~ examining board.

**SECTION 35.** 449.17 (8) (title) of the statutes is created to read:

449.17 (8) (title) REIMBURSEMENT PROHIBITED.

**SECTION 36.** 449.18 (1) of the statutes is renumbered 449.18 (1) (intro.) and amended to read:

449.18 (1) APPLICABILITY (intro.) No optometrist may use therapeutic pharmaceutical agents or remove foreign bodies from an eye or from an appendage to the eye unless ~~the optometrist is certified by the examining board under this section.~~ one of the following applies:

**SECTION 37.** 449.18 (1) (a), (b) and (c) of the statutes are created to read:

449.18 (1) (a) The examining board initially issues a license to practice optometry to the optometrist on or after the effective date of this paragraph .... [revisor inserts date].

(b) The department issued a certificate to the optometrist under s. 449.18, 2003 stats.

(c) The examining board issues a certificate under sub. (2) to an optometrist issued a license to practice optometry before the effective date of this paragraph .... [revisor inserts date].

**SECTION 38.** 449.18 (2) (title) of the statutes is created to read:

449.18 (2) (title) LICENSES ISSUED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION .... [REVISOR INSERTS DATE].

**SECTION 39.** 449.18 (2) (intro.) of the statutes is renumbered 449.18 (2) (a) (intro.) and amended to read:

449.18 (2) (a) (intro.) The examining board shall certify an optometrist to use therapeutic pharmaceutical agents and remove foreign bodies from an eye or from an appendage to the eye if the optometrist was issued a

license to practice optometry before the effective date of this paragraph .... [revisor inserts date], and the optometrist satisfies all of the following:

**SECTION 40.** 449.18 (2) (a) of the statutes is renumbered 449.18 (2) (a) 1. and amended to read:

449.18 (2) (a) 1. The optometrist is certified under s. 449.17, 2003 stats., or s. 449.17 (1m) (a) to use topical ocular diagnostic pharmaceutical agents.

**SECTION 41.** 449.18 (2) (b) of the statutes is renumbered 449.18 (2) (a) 2. and amended to read:

449.18 (2) (a) 2. The optometrist has successfully completed 100 hours of approved study in the use of therapeutic pharmaceutical agents and the removal of superficial foreign bodies from an eye or from an appendage to the eye. The course of study shall be offered by an institution approved by the examining board and accredited by a regional or professional accrediting organization that is recognized by the ~~council on postsecondary accreditation of~~ Council for Higher Education Accreditation or its successor or the federal department of education.

**SECTION 42.** 449.18 (2) (c) of the statutes is renumbered 449.18 (2) (a) 3. and amended to read:

449.18 (2) (a) 3. The optometrist has passed an examination ~~under sub. (3) conducted or approved by the examining board.~~ The examining board shall periodically review the validity, reliability, and appropriateness of the examination that it conducts or approves under this subdivision.

**SECTION 43.** 449.18 (2) (e) of the statutes is created to read:

449.18 (2) (e) A certificate issued under par. (a) or s. 449.18, 2003 stats., remains in effect while the optometrist's license to practice optometry remains in effect unless the certificate is suspended or revoked by the examining board.

**SECTION 44.** 449.18 (3) and (4) of the statutes are repealed.

**SECTION 45.** 449.18 (4m) of the statutes is renumbered 449.18 (2) (d) and amended to read:

449.18 (2) (d) No fee may be charged for the issuance ~~or renewal~~ of a certificate under ~~this section~~ par. (a).

**SECTION 46.** 449.18 (5) of the statutes is amended to read:

449.18 (5) REMOVALS FROM EYES. An optometrist who is ~~certified under this section~~ allowed under sub. (1) to remove a foreign body from an eye or from an appendage to an eye may not remove a foreign body from an eye or from an appendage to an eye if the foreign body is deeper than Bowman's layer of the cornea or deeper than the conjunctiva.

**SECTION 47.** 449.18 (6) (title) of the statutes is created to read:

449.18 (6) (title) USE OF THERAPEUTIC PHARMACEUTICALS.

**SECTION 48.** 449.18 (6) (intro.) of the statutes is repealed.

**SECTION 49.** 449.18 (6) (a) of the statutes is renumbered 449.18 (6) (am) 1. and amended to read:

449.18 (6) (am) 1. ~~May not prescribe~~ Prescribe or administer any therapeutic pharmaceutical agent that he or she is prohibited from prescribing or administering under the rules promulgated under ~~sub. (8) par. (cm).~~

**SECTION 50.** 449.18 (6) (am) (intro.) of the statutes is created to read:

449.18 (6) (am) An optometrist who is allowed under sub. (1) to use therapeutic pharmaceutical agents may not do any of the following:

**SECTION 51.** 449.18 (6) (b) of the statutes is renumbered 449.18 (6) (bm), and 449.18 (6) (bm) (intro.) and 1., as renumbered, are amended to read:

449.18 (6) (bm) (intro.) ~~Shall~~ An optometrist who is allowed under sub. (1) to use therapeutic pharmaceutical agents shall include with each prescription order all of the following:

1. A statement that he or she is ~~certified under this section~~ allowed under sub. (1) to use therapeutic pharmaceutical agents.

**SECTION 52.** 449.18 (6) (c) of the statutes is renumbered 449.18 (6) (am) 2. and amended to read:

449.18 (6) (am) 2. ~~May not dispense~~ Dispense, as defined in s. 450.01 (7), other than by prescribing or administering. This ~~paragraph~~ subdivision does not prohibit the optometrist from providing a complimentary sample of a therapeutic pharmaceutical agent to a patient to whom the optometrist has rendered therapeutic care.

**SECTION 53.** 449.18 (7) of the statutes is repealed.

**SECTION 54.** 449.19 of the statutes is amended to read:

**449.19 Referral to other specialists health care professionals.** If, during the course of examining a person, an optometrist determines the existence of a pathological condition requiring treatment outside the scope of the practice of optometry, the optometrist shall so advise the person and shall refer the person to an appropriate ~~medical specialist~~ health care professional, as defined in s. 180.1901 (1m), for further evaluation.

**SECTION 55.** 961.39 (intro.) of the statutes is amended to read:

**961.39 Limitations on optometrists.** (intro.) An optometrist who is ~~certified~~ allowed under s. 449.18 (1) to use therapeutic pharmaceutical agents:

**SECTION 56.** 961.39 (2) of the statutes is amended to read:

961.39 (2) May prescribe or administer only those controlled substances included in schedules III, IV, and V that are permitted for prescription or administration under the rules promulgated under s. 449.18 ~~(8) (6) (cm).~~

**SECTION 57.** 961.39 (3) (a) of the statutes is amended to read:

961.39 (3) (a) A statement that he or she is ~~certified~~ allowed under s. 449.18 (1) to use therapeutic pharmaceutical agents.

**SECTION 58. Nonstatutory provisions.**

(1) APPROVALS TRANSITION. All approvals issued by the department of regulation and licensing under section 449.17 (2) and (4), 2003 stats., that are in effect on the effective date of this subsection remain in effect until their specified expiration date or until modified or rescinded by the optometry examining board.

(2) PENDING MATTERS TRANSITION. Any matter pending with the department of regulation and licensing on the effective date of this subsection that relates to an approval under section 449.17 (2) or (4), 2003 stats., is transferred to the optometry examining board and all materials submitted to or actions taken by the department with respect to the pending matter are considered as having been submitted to or taken by the board.

(3) CONTINUING EDUCATION RULES.

(a) The optometry examining board shall submit in proposed form the rules required under section 449.06 (2m) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 10th month beginning after the effective date of this paragraph.

(b) Using the procedure under section 227.24 of the statutes, the optometry examining board may promulgate rules required under section 449.06 (2m) of the statutes, as created by this act, for the period before the effective date of the rules submitted under paragraph (a), but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the optometry examining board is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

**SECTION 59. Initial applicability.**

(1) EXAMINATIONS. The treatment of section 449.04 (2) (intro.) of the statutes first applies to examinations administered on the effective date of this subsection.

(2) ENDORSEMENT. The treatment of sections 449.05 (2) and 449.055 (2), (5), and (6) of the statutes first applies to applications for licenses received on the effective date of this subsection.

**SECTION 60. Effective date.**

(1) This act takes effect on the first day of the 4th month beginning after publication.