

1987 Assembly Bill 606

Date of enactment: April 13, 1988  
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## 1987 Wisconsin Act 264

AN ACT to repeal 446.04 (5) (e); to amend 15.405 (7g), 15.405 (7m), 115.001 (11), 146.81 (1), 440.05 (8), 441.01 (5), 441.04, 441.06 (title), (1) and (2), 441.06 (4) and (6), 441.07 (1) (intro.) and (c), 441.08, 441.10 (1), 441.10 (3) (a), 441.10 (3) (c), 441.10 (3) (e), 441.11 (2), 441.15 (3) (a), 447.05 (4), 448.07 (1) (b), 450.03 (1) (a), 450.10 (3) (a), 452.10 (2) (a), 452.12 (4), 647.01 (7), 655.001 (8) and 905.04 (1) (f); and to repeal and recreate 440.05 (3) and 441.07 (2) of the statutes, relating to modifying the listings of renewal fees for occupations and other entities regulated by the department of regulation and licensing; changing the authorization to practice for registered nurses and nurse-midwives to licensure; deleting requirements to biennially report listings of persons licensed by the dental or medical examining boards; requirements for temporary permits for practical nurses; eliminating certain requirements for accredited schools for licensed practical nurses; eliminating certain requirements for office signs of licensed chiropractors; eliminating requirements for certain signatures on certain licenses or certificates of registration; and eliminating required provision of real estate study manuals by the real estate board (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 consid-

eration 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. 15.405 (7g) of the statutes is amended to read:

15.405 (7g) BOARD OF NURSING. There is created a board of nursing in the department of regulation and licensing. The board of nursing shall consist of the following members appointed for staggered 4-year terms: 5 currently licensed registered nurses under ch. 441; 2 currently licensed practical nurses under ch. 441; and 2 public members. Each registered nurse member shall have graduated from a program in professional nursing and each practical nurse member shall have graduated from a program in practical nursing accredited by the state in which the program was conducted.

SECTION 2. 15.405 (7m) of the statutes is amended to read:

15.405 (7m) NURSING HOME ADMINISTRATOR EXAMINING BOARD. There is created a nursing home administrator examining board in the department of regulation and licensing consisting of 9 members appointed for staggered 4-year terms and the secretary of health and social services or a designee, who shall serve as a nonvoting member. Five members shall be nursing home administrators licensed in this state. One member shall be a physician. One member shall be a nurse ~~registered or~~ licensed under ch. 441. Two members shall be public members. No more than 2 members may be officials or full-time employes of this state.

SECTION 3. 115.001 (11) of the statutes is amended to read:

115.001 (11) SCHOOL NURSE. "School nurse" means a registered nurse ~~certified~~ licensed under ch. 441 who is also certified by the department as being qualified to perform professional nursing services in a public school.

SECTION 4. 146.81 (1) of the statutes is amended to read:

146.81 (1) "Health care provider" means a nurse ~~registered or~~ licensed under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, podiatrist or physical therapist licensed under ch. 448, an optometrist licensed under ch. 449, a psychologist licensed under ch. 455, a partnership thereof, a corporation thereof that provides health care services, an operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employes in its own facility, or an inpatient health care facility or community-based residential facility, as defined in s. 140.85 (1) or 140.86.

NOTE: See the NOTE following the treatment of s. 905.04 (1) (f), stats., in this bill.

SECTION 5. 440.05 (3) of the statutes is repealed and recreated to read:

440.05 (3) Renewals: The fee for renewal of a license, permit, certificate or registration for the occupations under each of the following designations shall be:

(a) *Accounting examining board.*

1. Certified public accountant, \$43.
2. Public accountant, \$43.

(b) *Examining board of architects, professional engineers, designers and land surveyors.*

1. Designer, \$33.
2. Land surveyor, \$33.
3. Architect, \$33.
4. Professional engineer, \$33.

(c) *Barbers examining board.*

1. Barbering instructor, \$57.
2. Master barber, \$57.
3. Barber shop manager, \$57.
4. Barber shop manager; location, \$57.

(d) *Chiropractic examining board.*

1. Chiropractor, \$71.

(e) *Cosmetology examining board.*

1. Managing cosmetologist, \$38.
2. Cosmetology operator, \$38.
3. Cosmetology instructor, \$38.
4. Electrologist, \$38.
5. Manicurist, \$38.
6. Itinerant cosmetologist, \$38.

(f) *Dentistry examining board.*

1. Dentist, \$35.
2. Dental hygienist, \$35.

(g) *Funeral directors examining board.*

1. Funeral director, \$58.
2. Funeral director certified in good standing, \$58.

(h) *Hearing aid dealers and fitters examining board.*

1. Hearing aid dealer or fitter, \$119.

(i) *Board of nursing.*

1. Licensed practical nurse, \$32.
2. Registered nurse, \$32.
3. Nurse-midwife, \$32.

(j) *Nursing home administrator examining board.*

1. Nursing home administrator, \$53.

(k) *Optometry examining board.*

1. Optometrist, \$63.

(L) *Other.*

1. Private detective, \$124.

(m) *Pharmacy examining board.*

1. Pharmacist, \$57.

(n) *Medical examining board.*

1. Physician (doctor of medicine), \$82.
2. Physician (doctor of osteopathy), \$82.
3. Physician (doctor of osteopathy and surgery), \$82.
4. Physician's assistant, \$82.
5. Physical therapist, \$82.
6. Podiatrist, \$82.

(o) *Psychology examining board.*

1. Psychologist, \$74.
2. Private practice school psychologist, \$74.

(p) *Real estate board.*

1. Real estate broker, \$45.
2. Real estate salesperson, \$45.
3. Cemetery salesperson, \$45.

(q) *Veterinary examining board.*

1. Veterinarian, \$50.
2. Animal technician, \$50.

SECTION 6. 440.05 (8) of the statutes is amended to read:

440.05 (8) Initial or renewal license, permit, certificate or registration for funeral establishments, schools, barber shops, beauty salons, ~~drug stores~~ electrolysis salons, pharmacies, drug manufacturers, drug distributors, cemetery associations, corporations, partnerships, and business firms and branch offices: \$50.

NOTE: The bill removes license renewal fees listed in error under s. 440.05 (3)(a), stats., which are also established under s. 440.05 (8), stats.; moves several establishment license renewal fees from s. 440.05 (3) (a), stats., to s. 440.05 (8), stats.; removes fees for licenses that were eliminated by previous legislation; lists each license in the singular and adds a renewal fee for nurse-midwives inadvertently omitted from the variable fee schedule.

SECTION 7. 441.01 (5) of the statutes is amended to read:

441.01 (5) The board may promote the professional education of graduate registered nurses ~~registered licensed~~ in Wisconsin, through creation of scholarships available to such graduate registered nurses, by foundation of professorships in nursing courses in Wisconsin colleges and universities, by conducting educational meetings, seminars, lectures, demonstrations and the like open to registered nurses, by publication and dissemination of technical information or by other similar activities designed to improve the standards of the nursing profession in this state. The board may promote the training of licensed practical nurses through support of workshops and institutes and by conducting meetings, lectures, demonstrations and the like open to licensed practical nurses.

SECTION 8. 441.04 of the statutes is amended to read:

**441.04 Requisites for examination as a registered nurse.** Any person who has graduated from a high school or its equivalent as determined by the board, does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, holds a diploma of graduation from an accredited school of nursing and, if the school is located outside this state, submits evidence of general and professional educational qualifications comparable to those required in this state at the time of graduation may apply to the department for registration licensure by the board as a registered nurse, and upon payment of the fee specified under s. 440.05 (1) shall be entitled to examination.

SECTION 9. 441.06 (title), (1) and (2) of the statutes are amended to read:

**441.06 (title) Licensure; civil liability exemption.** (1) An applicant for registration licensure as a registered nurse who complies with the requirements of this chapter and satisfactorily passes an examination shall receive a ~~certificate of registration license~~. The holder of such a ~~certificate of registration license~~ of another state or territory or province of Canada may be granted a certificate license without examination if the holder's credentials of general and professional educational qualifications and other qualifications are comparable to those required in this state during the same period and if the board is satisfied from the holder's employment and professional record that the holder is currently competent to practice the profession. The board shall evaluate the credentials and determine the equivalency and competency in each case. The application for registering licensure without examination shall be accompanied by the fee prescribed in s. 440.05 (2).

(2) The certificate license shall be signed by the chairman chairperson of the board and ~~countersigned by the secretary of the examining council~~. The holder of ~~such certificate~~ the license is a "registered nurse" and may append "R.N." to his or her name, and is authorized to practice professional nursing.

NOTE: There is no longer a reason for requiring the signature of the secretary of the examining council of registered nurses on the certificate of registration of a registered nurse, because the council's authority is now advisory to the board of nursing. The bill will facilitate the processing of the thousands of licenses issued by the bureau of health service professions in DORL, because the bureau will no longer have to reorder signature plates each time a new person commences service as the secretary of the examining council.

See also the NOTE following the treatment of s. 905.04 (1) (f), stats., in this bill.

SECTION 10. 441.06 (4) and (6) of the statutes are amended to read:

441.06 (4) No person may practice or attempt to practice professional nursing, nor use the title, letters, or anything else to indicate that he or she is a registered or professional nurse unless he or she is registered licensed under this section. No person not so registered licensed may use in connection with his or her nursing employment or vocation any title or anything else to indicate that he or she is a trained, certified or graduate nurse.

(6) No person licensed as a registered nurse under this section ~~shall be~~ is liable for any civil damages resulting from ~~such person's~~ his or her refusal to perform sterilization procedures or to remove or aid in the removal of a human embryo or fetus from a person, if ~~such~~ the refusal is based on religious or moral precepts.

SECTION 11. 441.07 (1) (intro.) and (c) of the statutes are amended to read:

441.07 (1) (intro.) The board may, after disciplinary proceedings conducted in accordance with rules promulgated under s. 440.03 (1), revoke, limit, sus-

pend or deny renewal of a ~~certificate of registration~~ license of a registered nurse, certificate of a nurse-midwife or license of a licensed practical nurse, or may reprimand a registered nurse, nurse-midwife or licensed practical nurse, if the board finds that the person committed any of the following:

(c) Acts which show the registered nurse, nurse-midwife or licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.

SECTION 12. 441.07 (2) of the statutes is repealed and recreated to read:

441.07 (2) The board may reinstate a revoked license, no earlier than one year following revocation, upon receipt of an application for reinstatement.

SECTION 13. 441.08 of the statutes is amended to read:

**441.08 Temporary permit.** A nurse who has graduated from an accredited school but is not ~~registered~~ licensed in this state may be granted a temporary permit upon payment of the fee specified in s. 440.05 (6) by the board to practice for compensation until the nurse can qualify for ~~registration licensure~~. The temporary permit may be renewed once. Further renewals may be granted in hardship cases. The board may promulgate rules limiting the use and duration of temporary permits and providing for revocation of temporary permits.

NOTE: See also the NOTE following the treatment of s. 905.04 (1) (f), stats., in this bill.

SECTION 14. 441.10 (1) of the statutes is amended to read:

441.10 (1) **PREREQUISITES FOR EXAMINATION AS LICENSED PRACTICAL NURSES.** A person who is 18 years of age or older, does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, has completed 2 years of high school or its equivalent as determined by the board and holds a diploma of graduation from an accredited school for licensed practical nurses approved by that board, ~~which school shall be connected with an institution providing hospital facilities for the care of medical, surgical and obstetrical cases,~~ may apply to the board for licensing as a licensed practical nurse, and, upon payment of the examination fee specified in s. 440.05 (1), shall be entitled to take an examination. Any school for licensed practical nurses, in order to be accredited, must offer a course of not less than 9 months.

NOTE: This bill deletes an outdated reference to the former academic structure of practical nursing programs operating out of hospital or health care institutions.

SECTION 15. 441.10 (3) (a) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

441.10 (3) (a) On complying with this chapter relating to applicants for licensure as licensed practical nurses, and passing an examination, the applicant shall receive a license as a licensed practical nurse, signed by the chairperson of the board ~~and counter-~~

~~signed by the secretary of the examining council on licensed practical nurses.~~ The holder of the license is a "licensed practical nurse" and may append the letters "L.P.N." to his or her name. The board may reprimand or may limit, suspend or revoke the license of a licensed practical nurse under s. 441.07.

NOTE: There is no longer a reason for requiring the signature of the secretary of the examining council of licensed practical nurses on the license of a licensed practical nurse, because the council's authority is now advisory to the board of nursing. The bill will facilitate the processing of the thousands of licenses issued by the bureau of health service professions in DORL, because the bureau will no longer have to reorder signature plates each time a new person commences service as the secretary of the examining council.

SECTION 16. 441.10 (3) (c) of the statutes is amended to read:

441.10 (3) (c) No license is required for practical nursing, but no person without a license may hold himself or herself out as a licensed practical nurse or licensed attendant, use the title or letters "Trained Practical Nurse" or "T.P.N.", "Licensed Practical Nurse" or "L.P.N.", "Licensed Attendant" or "L.A.", "Trained Attendant" or "T.A.", or otherwise seek to indicate that he or she is a licensed practical nurse or licensed attendant. No licensed practical nurse or licensed attendant may use the title, or otherwise seek to act as a registered, licensed, ~~certified~~, graduate or professional nurse. Anyone violating this subsection shall be subject to the penalties prescribed by s. 441.13. The board shall grant without examination a license as a licensed practical nurse to any person who was on July 1, 1949, a licensed attendant.

NOTE: See also the NOTE following the treatment of s. 905.04 (1) (f), stats., in this bill.

SECTION 17. 441.10 (3) (e) of the statutes is amended to read:

441.10 (3) (e) ~~A The board may grant a temporary permit may be granted to an applicant who is qualified for examination, to practice as a licensed practical nurse and who pays the fee specified in s. 440.05 (6) until a regular license may be had and may be renewed for a like period. Further has graduated from an accredited school but is not licensed in this state, upon payment of the fee specified in s. 440.05 (6), to practice for compensation until the practical nurse qualifies for licensure. The board may grant further renewals may be granted in hardship cases.~~ The board may promulgate rules limiting the use and duration of temporary permits and providing for revocation of temporary permits.

NOTE: The eligibility requirements for temporary permits for registered nurses and licensed practical nurses should be parallel. This bill clarifies that licensed practical nurse applicants for licensure by endorsement from out of state as well as by graduation from an accredited school in Wisconsin are eligible for temporary permits.

The rewording of this section removes any questions concerning licensed practical nurse endorsement applicant eligibility, and makes the licensed practical nurse provision parallel and consistent with the registered nurse temporary permit requirements under s. 441.08, stats.

SECTION 18. 441.11 (2) of the statutes is amended to read:

441.11 (2) NURSE AND NURSING. ~~Wherever~~ Except as provided under s. 441.08, wherever the term "nurse" is used in this chapter without modification or amplification it shall mean only a registered nurse. Wherever the term "nursing" is used in this chapter without modification or amplification it shall mean the practice of professional nursing as ~~herein defined~~ specified in sub. (4).

SECTION 19. 441.15 (3) (a) of the statutes is amended to read:

441.15 (3) (a) The board shall grant a ~~certificate license~~ license to engage in the practice of nurse-midwifery to any person ~~registered licensed~~ registered as a registered nurse under this chapter who meets the educational and training prerequisites established by the board for the practice of nurse-midwifery and who pays the fee specified under s. 440.05 (1).

NOTE: See also the NOTE following the treatment of s. 905.04 (1) (f), stats., in this bill.

SECTION 20. 446.04 (5) (e) of the statutes is repealed.

NOTE: Section 446.04 (5) (e), stats., provides that unprofessional conduct for chiropractors consists in part of unprofessional advertising, which includes the use of the term "clinic" or "center" in office signs unless the office meets the requirements for a clinic or center as defined by the chiropractic examining board. This proposal repeals the statute.

The U.S. supreme court has held, in a long and growing line of cases, that commercial speech is entitled to some first amendment protection against state legislation. Under these cases, it is clear that states can regulate or prohibit commercial speech that is false or misleading. However, speech that is neither false nor misleading is presumed to be protected, and states cannot regulate it unless they have a strong interest.

Prohibiting the use of the terms "clinic" or "center" is potentially unconstitutional under these cases making the examining board vulnerable to litigation, which the examining board is reasonably likely to lose. Section 446.04 (5) (a), stats., prohibits any advertising that is false or misleading, which would cover any harmful advertising involving the terms "center" or "clinic".

SECTION 21. 447.05 (4) of the statutes is amended to read:

447.05 (4) A renewal fee is due and payable on or before September 30 of each odd-numbered year following issuance of the license. The examining board shall ~~publish maintain~~ publish maintain a biennial report and list of the names and places of practice of all licensed and registered dentists and registered dental hygienists which shall be available for purchase at cost. ~~The department shall mail a copy of the published list to the secretary of state, the district attorney of each county, each local board of health and to any other public official who may request or have need thereof.~~ Any registrant who, subsequent to registering, changes the address or place of residence or professional office, or who opens an additional office, shall, within 30 days thereafter, notify the examining board in writing of the change and furnish the new residence or professional address.

NOTE: The existing statute requires biennial publication of a list of the names and places of practice of all dentists and dental hygienists.

Although the precise history of the dentistry directories is not clear, complimentary copies were at one time provided to all licensees. This practice was dropped at the same time medical directories ceased to be mailed, at no cost, to licensees. Approximately 350 dentistry directories are mailed to dental offices and clinics and to insurance companies. The purpose of the directories is to identify current names and addresses of licensees. However, the information is frequently obsolete by the time it is published. As many as 500 new dentists and hygienists may have been licensed during that period, with approximately as many address changes. None of the changes would show up in the biennial directory, but would appear on a current computer print-out. This proposal deletes the publication requirement.

The data formerly published will be made available as required by s. 440.035 (4), stats., through updated computer lists of licensees which may be purchased at cost under s. 447.05 (4), stats.

SECTION 22. 448.07 (1) (b) of the statutes is amended to read:

448.07 (1) (b) ~~On or before March 10 of each even-numbered year the~~ The board shall ~~publish maintain~~ publish maintain the register required by s. 440.035 (4), which shall be divided according to the activity for which the registrant is licensed or certified. ~~The secretary of the board shall cause a copy of the list to be mailed to the secretary of state, the district attorney of each county, each local board of health, the sheriff of each county, the chief of police of each community and to any other public official who may request or have need thereof.~~ The board shall make copies available for ~~general distribution~~ purchase at cost.

NOTE: The existing statute requires biennial publication of a register of medical examining board licensees. Typically, a number of names and addresses change during the biennium, making the register outdated, often by the time of publication.

The practice of preparing medical directories started in the late 1940's when physician annual registration began. At that time, complimentary copies of the directories were mailed to all licensees. The practice of providing complimentary copies stopped in the late 1970's. Approximately 3,500 directories are mailed annually to hospitals and clinics, physician's offices and insurance companies. They purchase the directories to identify current names and addresses of licensees. However, by the time the directory is printed, between 500 and 1,000 more individuals have been licensed and there have typically been over 1,000 address changes. This proposal deletes the publication requirement.

The data formerly published will be made available as required by s. 440.035 (4), stats., through updated computer lists of licensees which may be purchased at cost under s. 448.07 (1) (b), stats.

SECTION 23. 450.03 (1) (a) of the statutes is amended to read:

450.03 (1) (a) The offer to sell or sale of contraceptive articles, as defined under s. 450.155 (1) (a), by a ~~professional nurse registered~~ nurse licensed under s. 441.06.

SECTION 24. 450.10 (3) (a) of the statutes is amended to read:

450.10 (3) (a) In this subsection, "health care professional" means a pharmacist licensed under this chapter, a nurse ~~registered or~~ licensed under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, a podiatrist or physical therapist licensed under ch. 448, an optometrist licensed under ch. 449, a veterinarian licensed under ch. 453 or a psychologist licensed under ch. 455.

NOTE: See also the NOTE following the treatment of s. 905.04 (1) (f), stats., in this bill.

SECTION 25. 452.10 (2) (a) of the statutes is amended to read:

452.10 (2) (a) Each new application for a broker's or salesperson's license or cemetery registration shall be for the remainder of the biennial license period. ~~Each new applicant for a salesperson's license shall receive a free copy of the current study manual.~~

NOTE: The real estate board attached to DORL no longer publishes the real estate manual. The university of Wisconsin-extension law department now publishes a comprehensive real estate manual which is available for purchase by real estate licensees. The real estate board provides licensees with a statute and rule book comparable to those published by other boards.

SECTION 26. 452.12 (4) of the statutes is amended to read:

452.12 (4) (title) REGISTER OF BROKERS AND SALESPERSONS. The department shall ~~prepare and publish in convenient form~~ maintain the register ~~compiled under required by s. 440.035 (4).~~ The names of all brokers and salespersons whose licenses have been revoked at any time within 2 years prior to the issuance thereof shall also be included in the ~~publication~~ register. The ~~publication~~ register shall be available for purchase at cost.

NOTE: See also the NOTES following the treatment of ss. 447.05 (4) and 448.07 (1) (b), stats., in this bill.

SECTION 27. 647.01 (7) of the statutes is amended to read:

647.01 (7) "Nursing services" means those services pertaining to the curative, restorative and preventive aspects of nursing care that are performed by or under the supervision of a nurse licensed ~~or registered~~ under ch. 441, but does not include nursing services provided only on an emergency basis.

SECTION 28. 655.001 (8) of the statutes is amended to read:

655.001 (8) "Health care provider" means a medical or osteopathic physician licensed under ch. 448; a

nurse anesthetist licensed ~~or registered~~ under ch. 441; a partnership comprised of such physicians or nurse anesthetists; a corporation organized and operated in this state for the purposes of providing the medical services of physicians or nurse anesthetists; an operational cooperative sickness care plan organized under ss. 185.981 to 185.985 which directly provides services through salaried employees in its own facility; a hospital as defined by s. 50.33 (2) (a) and (c) and any entity operated in this state in connection with one or more hospitals and owned or controlled by the hospital or hospitals when the entity is assisting the hospital or hospitals in providing diagnosis or treatment of, or care for, patients of the hospital or hospitals; or a nursing home as defined by s. 50.01 (3) whose operations are combined as a single entity with a hospital subject to this section, whether or not the nursing home operations are physically separate from hospital operations. It excludes any state, county or municipal employe or federal employe covered under the federal tort claims act, as amended, who is acting within the scope of employment, and any facility exempted by s. 50.39 (3) or operated by any governmental agency, but any state, county or municipal employe or facility so excluded who would otherwise be included in this definition may petition in writing to be afforded the coverage provided by this chapter and upon filing the petition with the commissioner and paying the fee required under s. 655.27 (3) will be subject to this chapter.

SECTION 29. 905.04 (1) (f) of the statutes is amended to read:

905.04 (1) (f) "Registered nurse" means a nurse who ~~has a certificate of registration~~ is licensed under s. 441.06 or a person reasonably believed by the patient to be a registered nurse.

NOTE: The uniform use of the term "license" will greatly simplify statutory terms referring to the document conferring the privilege of practicing as a registered nurse.

SECTION 30. **Initial applicability.** The treatment of sections 441.06 (1) and 441.15 (3) (a) of the statutes first applies to licenses issued as renewals of registrations or certificates issued under section 441.06 (1) or 441.15 (3) (a), 1985 stats.

SECTION 31. **Effective date.** This act takes effect on February 1, 1988.