



## 2023 SENATE BILL 870

January 5, 2024 - Introduced by Senators JAGLER, AGARD and FEYEN, cosponsored by Representatives KRUG, ALLEN, BROOKS, DALLMAN, MURPHY, O'CONNOR and ORTIZ-VELEZ. Referred to Committee on Housing, Rural Issues and Forestry.

**AN ACT** *to renumber* 452.14 (2); *to renumber and amend* 452.14 (4m) (a); *to amend* 452.01 (5g), 452.14 (4r), 452.17 (1), 452.17 (3), 452.19 (1), 452.23 (title) and 452.23 (4); *to repeal and recreate* 452.23 (3); and *to create* 452.07 (4), 452.12 (5) (e), 452.14 (2) (b), 452.14 (2) (c), 452.14 (3) (im), 452.14 (4m) (a) 1., 452.23 (5) and 710.13 of the statutes; **relating to:** various changes regarding the laws governing real estate practice, disclosures regarding real property wholesalers, and providing a penalty.

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### ***Analysis by the Legislative Reference Bureau***

This bill 1) revises the law governing the practice of real estate by real estate brokers and salespersons (real estate practice law) and 2) requires real property wholesalers to provide certain disclosures to other parties involved in residential real property transactions.

### **CHANGES REGARDING REAL ESTATE PRACTICE LAW**

Current law regulates the practice of real estate, which can only be practiced by real estate brokers and real estate salespersons. Real estate brokers and salespersons (licensees) are licensed by the Real Estate Examining Board, which is

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attached to the Department of Safety and Professional Services. A real estate broker's license may be issued to either an individual or a business entity. The bill makes various changes to real estate practice law, described in further detail as follows:

***Disclosures***

Current law imposes on a real estate firm providing brokerage services to a party to a transaction the duty to timely disclose in writing all material adverse facts that the firm knows and that the party does not know or cannot discover through reasonably vigilant observation, unless the disclosure of a material adverse fact is prohibited by law. The law defines both "adverse fact" and "material adverse fact." Furthermore, each licensee associated with a firm owes the same duties to a party that the firm owes to that party. Separately, current law contains a requirement that a licensee disclose to the parties to a real estate transaction any facts known by the licensee that contradict any information included in a written real estate condition report. Current law further contains a list of specific types of information that a licensee is not required to disclose.

The bill 1) harmonizes the disclosure requirement and the duty described above; 2) clarifies that the "material adverse facts" that licensees have the duty to disclose do not include anything on the list of specified types of information that current law provides are exempt from needing to be disclosed; 3) prohibits the board from promulgating rules that conflict with these provisions or that mandate additional disclosures; and 4) provides that a licensee that in good faith provides information attributable to a state or local governmental or quasi-governmental entity may not be held civilly liable if that information is subsequently determined to be inaccurate.

***Discipline and licenses***

The bill makes various changes pertaining to the discipline of licensees, including the following:

1. The bill requires the board to notify a real estate brokerage firm in writing as to all investigations and disciplinary proceedings and actions that are related to a licensee associated with that firm, including the contents of any administrative warning issued by the board. The bill also provides that if an application for renewal of a license issued to a licensee who is associated with a firm is not filed with the board on or before the renewal date or if the renewal is not granted, DSPS must notify the firm.

2. The bill expressly provides that a real estate brokerage firm is not responsible for ensuring compliance with, or for the monitoring of, any license limitations set forth by the board of a broker or salesperson associated with that firm.

3. Current law contains a list of prohibitions, violations of which subject a licensee to professional discipline. Current law further allows the board to assess a

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forfeiture of not more than \$1,000 for such violations. The bill raises the maximum forfeiture that the board may assess for a number of these violations to \$5,000.

***Criminal penalties***

Under current law, any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as, a broker or salesperson in this state without a license or who otherwise violates the real estate practice law may be fined not more than \$1,000 or imprisoned for not more than six months or both. The bill raises the maximum criminal fine for violations to \$5,000. The bill does not affect the maximum term of imprisonment.

**DISCLOSURES REGARDING REAL PROPERTY WHOLESALERS**

The bill requires a real property wholesaler to provide certain disclosures to other parties involved in a real property transaction. Under the bill, “real property wholesaler” is defined as a person that enters into a purchase agreement as a buyer and intends to sell the person’s rights as buyer to a third party, and “purchase agreement” is defined as a contract for the sale, exchange, option, rental, or purchase of residential real property that includes one to four dwelling units.

The bill requires a real property wholesaler, no later than entering into a purchase agreement as a buyer, to provide written notice to the seller that the buyer is a real property wholesaler. Under the bill, if the real property wholesaler fails to provide the notice, the seller may rescind the purchase agreement at any time before the closing and retain any deposits or option fees paid by the real property wholesaler.

In addition, if the real property wholesaler contracts to sell its interest in the purchase agreement to a third party, the bill requires the real property wholesaler, no later than entering into the contract, to provide written notice to the third party that the real property wholesaler is a real property wholesaler that holds an equitable interest in the property as a buyer under the purchase agreement and that the real property wholesaler is conveying its interest in the purchase agreement, not title to the property. Under the bill, if the real property wholesaler fails to provide the notice, the third party may rescind the contract at any time before the closing and is entitled to the return of any deposits or option fees paid by the third party.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

Because this bill may increase or decrease, directly or indirectly, the cost of the development, construction, financing, purchasing, sale, ownership, or availability of housing in this state, the Department of Administration, as required by law, will prepare a report to be printed as an appendix to this bill.

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

**SECTION 1.** 452.01 (5g) of the statutes is amended to read:

452.01 **(5g)** “Material adverse fact” means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party’s decision to enter into a contract or agreement concerning a transaction or affects or would affect the party’s decision about the terms of such a contract or agreement. “Material adverse fact” does not include anything specified in s. 452.23 (2) (a), (c), or (d).

**SECTION 2.** 452.07 (4) of the statutes is created to read:

452.07 **(4)** The board may not promulgate rules regarding disclosures by brokers or salespersons that conflict with s. 452.23 or that require disclosures beyond what is required under s. 452.23.

**SECTION 3.** 452.12 (5) (e) of the statutes is created to read:

452.12 **(5)** (e) If an application for renewal of a license issued to a licensee who is associated with a firm is not filed with the board on or before the renewal date or if the renewal is not granted, the department shall notify the firm with which the licensee is associated.

**SECTION 4.** 452.14 (2) of the statutes is renumbered 452.14 (2) (a).

**SECTION 5.** 452.14 (2) (b) of the statutes is created to read:

452.14 **(2)** (b) The board shall notify a firm in writing as to all investigations and disciplinary proceedings and actions that are related to a licensee associated with the firm. Notwithstanding s. 440.205, a notice shall include the contents of

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any administrative warning issued under s. 440.205. A notice shall be made to the mailing address of the firm and to the email address of the individual broker acting as a sole proprietor or the email address for the licensed business entity.

**SECTION 6.** 452.14 (2) (c) of the statutes is created to read:

452.14 (2) (c) A firm is not responsible for ensuring compliance with, or for the monitoring of, any license limitations set forth by the board of a licensee associated with the firm.

**SECTION 7.** 452.14 (3) (im) of the statutes is created to read:

452.14 (3) (im) Violated s. 710.13 (2).

**SECTION 8.** 452.14 (4m) (a) of the statutes is renumbered 452.14 (4m) (a) (intro.) and amended to read:

452.14 (4m) (a) (intro.) Assess a forfeiture against a licensee ~~as follows:~~

2. A forfeiture of not more than \$1,000 for each violation enumerated under sub. (3) that is not enumerated under subd. 1.

**SECTION 9.** 452.14 (4m) (a) 1. of the statutes is created to read:

452.14 (4m) (a) 1. A forfeiture of not more than \$5,000 for each violation enumerated under sub. (3) (a), (b), (c), (d), (f), (h), (i), (im), (j), (jm), (k), or (n).

**SECTION 10.** 452.14 (4r) of the statutes is amended to read:

452.14 (4r) The board may assess against a licensee who is an individual a forfeiture of ~~\$1,000~~ \$5,000 for a violation under s. 452.25 (2) (a).

**SECTION 11.** 452.17 (1) of the statutes is amended to read:

452.17 (1) Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as,

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a broker or salesperson in this state without a license under this chapter shall be prosecuted by the district attorney in the county where the violation occurs or by the attorney general and may be fined not more than ~~\$1,000~~ \$5,000 or imprisoned not more than 6 months or both.

**SECTION 12.** 452.17 (3) of the statutes is amended to read:

452.17 (3) Any person who otherwise violates any provision of this chapter may be fined not more than ~~\$1,000~~ \$5,000 or imprisoned for not more than 6 months or both.

**SECTION 13.** 452.19 (1) of the statutes is amended to read:

452.19 (1) No licensee may pay a fee or a commission or any part thereof for performing any act specified in this chapter or as compensation for a referral or as a finder's fee to any person who is not licensed under this chapter or who is not regularly and lawfully engaged in the real estate brokerage business in another state, a territory or possession of the United States, or a foreign country, unless the person was licensed under this chapter when the commission was earned or when the referral fee arrangement was made.

**SECTION 14.** 452.23 (title) of the statutes is amended to read:

**452.23 (title) Disclosures, ~~investigations~~ and inspections by brokers and salespersons.**

**SECTION 15.** 452.23 (3) of the statutes is repealed and recreated to read:

452.23 (3) (a) A licensee shall, except as provided in par. (b), disclose in writing to a party to a real estate transaction all material adverse facts known by

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the licensee that the party does not know or cannot discover through reasonably vigilant observation.

(b) Paragraph (a) does not require the disclosure of a material adverse fact to a party if any of the following applies:

1. The material adverse fact is addressed in a written report described under sub. (2) (b).

2. The material adverse fact has otherwise been disclosed to the party in writing.

3. Disclosure of the material adverse fact is prohibited by law.

**SECTION 16.** 452.23 (4) of the statutes is amended to read:

452.23 (4) In performing an ~~investigation or~~ inspection and in making a disclosure in connection with a real estate transaction, a licensee shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills, and training required for licensure under this chapter.

**SECTION 17.** 452.23 (5) of the statutes is created to read:

452.23 (5) A licensee that in good faith provides information attributable to a state or local governmental or quasi-governmental entity, including an agency, department, board, commission, bureau, or division, or a military or public safety organization, may not be held civilly liable if that information is subsequently determined to be inaccurate. For the purpose of any proceeding, the good faith shall be presumed.

**SECTION 18.** 710.13 of the statutes is created to read:

**710.13 Disclosures regarding real property wholesalers. (1)**

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DEFINITIONS. (a) "Purchase agreement" means a contract for the sale, exchange, option, rental, or purchase of residential real property.

(b) "Real property wholesaler" means a person that enters into a purchase agreement as a buyer and intends to assign the person's rights as buyer under the purchase agreement to a 3rd party for consideration.

(c) "Residential real property" means real property in this state that includes one to 4 dwelling units, as defined in s. 101.61 (1).

**(2) REQUIRED DISCLOSURES.** A real property wholesaler shall provide all of the following disclosures:

(a) No later than entering into a purchase agreement as a buyer, written notice to the seller of the residential real property that the buyer is a real property wholesaler.

(b) No later than entering into a contract with a 3rd party to assign the real property wholesaler's rights as buyer under a purchase agreement to the 3rd party, written notice to the 3rd party that the assignor is a real property wholesaler that holds an equitable interest in the residential real property as a buyer under the purchase agreement and that the assignor is conveying the assignor's interest in the purchase agreement, not title to the residential real property.

**(3) RIGHTS TO RESCIND.** (a) If a real property wholesaler fails to timely provide the disclosure to a seller as required under sub. (2) (a), the seller may rescind the purchase agreement at any time before the closing, without any liability on the seller's part, by providing written notice of rescission to the real property



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wholesaler, and the seller is entitled to retain any deposits or option fees paid by the real property wholesaler in connection with the transaction.

(b) If a real property wholesaler fails to timely provide the disclosure to a 3rd party assignee as required under sub. (2) (b), the assignee may rescind the assignment of the purchase agreement at any time before the closing, without any liability on the assignee's part, by providing written notice of rescission to the real property wholesaler, and the assignee is entitled to the return of any deposits or option fees paid by the assignee in connection with the transaction.

(4) WAIVER PROHIBITED. A person may not waive the person's rights under this section. If the person proceeds to closing, the person's right to rescind under sub. (3) is terminated.

**SECTION 19. Initial applicability.**

(1) DISCLOSURES REGARDING REAL PROPERTY WHOLESALERS. The treatment of s. 710.13 first applies to a purchase agreement or an assignment of a purchase agreement entered into on the effective date of this subsection.

(END)