2013 DRAFTING REQUEST

Bill

Received:	**1/7/2014**	Received By:	**mduchek**
Wanted:	**As time permits**	Same as LRB:	
For:	**Dean Knudson (608) 266-1526**	By/Representing:	**Matt Rossetto**
May Contact:		Drafter:	**mduchek**
Subject:	**Occupational Reg. - prof lic**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Knudson@legis.wisconsin.gov**
Carbon copy (CC) to: **michael.gallagher@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Changes regarding licenses issued by the Real Estate Boards to individuals with criminal records

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mduchek 1/7/2014	jdyer 1/7/2014		_____ _____			
/1			rschluet 1/7/2014	_____ _____	mbarman 1/7/2014	mbarman 1/7/2014	State

FE Sent For: 01-07-2014 ("/1")

<END>

Requested By Matt R.

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See attached

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mduchek	1 1/7 jld	jd	1/7			

FE Sent For:

<END>

Duchek, Michael

From: Rossetto, Matt
Sent: Tuesday, January 07, 2014 10:13 AM
To: Duchek, Michael
Subject: 3247

Hi Michael-

This is the final change... I promise this time. Section 11, page 6, lines 15-16, please remove "subsequent to being hired". Additionally, since this would be a /4, could you redraft with a new LRB number? Let me know if you have questions.

Thanks,

Matt

Matt Rossetto
Office of Representative Dean Knudson
30th Assembly District
(608) 266-1526

"RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

☞ **DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN**

(Request Made By: Mike D.) (Date: 2/4/13)

Note:

BOTH DRAFTS SHOULD HAVE THE SAME "REQUESTOR"

(exception: companion bills)

Done MB

❍ ☞ Please transfer the drafting file for

2011 LRB _____ (For: Rep. / Sen. _____)

to the drafting file for

2013 LRB _____ (For: Rep. / Sen. _____)

----------OR----------

❍ ☞ Please copy the drafting file for

2013 LRB 3247 / 3 (include the version) (For: Rep. / Sen. Knudson)

and place it in the drafting file for

2013 LRB 3915/1 (For: Rep. / Sen. Knudson)

☞ Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history ("guts") from the original file: Matt Rosetto

Updated: 09/05/2012

State of Wisconsin
2013 – 2014 LEGISLATURE

Soon

LRB-~~0247/3~~ 3915/1
MED:jld&wlj:jm

Keep

2013 BILL

Changes

346

PP

Regen

AN ACT ***to renumber and amend*** 452.15; ***to amend*** 452.01 (4), 452.025 (5) (b), 452.12 (3) and 452.14 (3) (intro.); and ***to create*** 440.03 (13) (bm), 452.01 (3p), 452.01 (4v), 452.05 (1) (h), 452.05 (1) (i), 452.07 (2), 452.12 (5) (d), 452.139 (3), 452.14 (2m), 452.14 (3) (o), 452.14 (3m), 452.14 (4r), 452.15 (2) and 452.25 of the statutes; **relating to:** eligibility for a broker's or salesperson's license or a time–share salesperson's certificate of registration following a criminal conviction, immunity for employing real estate brokers in certain actions, granting rule–making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Eligibility for licensure or registration by Real Estate Examining Board following criminal convictions

Under current law (the Fair Employment Law), a state agency may refuse to license, and may suspend from licensing, an individual who has been convicted of a felony, misdemeanor, or other offense only if the circumstances of the offense substantially relate to the circumstances of the particular licensed activity. The definition of state agency, for purposes of the Fair Employment Law, includes examining boards such as the Real Estate Examining Board (REEB), which issues broker's and salesperson's licenses and time–share salesperson's certificates of registration (real estate licenses and certificates).

Under this bill, notwithstanding the Fair Employment Law, no person may be issued a real estate license or certificate if the applicant has been convicted of any felony, other than: 1) a felony for which the person has been pardoned; 2) a felony for which the conviction has been reversed, set aside, or vacated; or 3) a felony for which the conviction has been expunged. The bill, however, provides for an exception to the prohibition if five years have elapsed since the person completed the sentence imposed for the felony, including any probation, parole, or extended supervision. In that case, the person may apply to the REEB for a determination as to whether the person is suitable to be granted a real estate license or certificate. The REEB must then make a determination by reviewing any information relating to the felony; reviewing any supplemental information provided by the applicant bearing upon his or her suitability for licensure or registration; and considering various factors that are specified in the bill. The bill provides that the applicant bears the burden of demonstrating his or her suitability for licensure or registration if seeking such a determination under this exception. The prohibition applies to current real estate license and certificate holders as of the next time a real estate license or certificate is renewed; the next deadline for renewing a license or certificate is December 15, 2014. In addition, the bill requires the REEB to revoke a person's real estate license or certificate if the person is convicted of a felony after the bill's effective date. The bill does not modify the law with respect to disqualifications from obtaining real estate licenses or certificates due to convictions for misdemeanors or other offenses.

The bill also authorizes the REEB to, by rule, establish a preapplication procedure. Under the preapplication procedure, a person who does not possess a real estate license or certificate may apply for a determination of whether the person would be disqualified from obtaining a real estate license or certificate due to his or her criminal record without submitting a full application and without paying the fees applicable to applicants. Any determination by the REEB under the preapplication procedure is binding upon the REEB if the person subsequently applies for a real estate license or certificate, unless there is information relevant to the determination that was not available to the REEB at the time of the determination.

The bill also does the following:

1. Requires the REEB to create a form for a person to disclose recent criminal convictions when renewing a real estate license or certificate and, if the REEB establishes a preapplication procedure, a form for a person to disclose criminal convictions under the preapplication procedure.

2. Allows the REEB to assess a forfeiture of $1,000 against a person who submits false information on either form.

3. Prohibits the issuance or renewal of a real estate license or certificate for a person assessed such a forfeiture, if the person has not paid the forfeiture.

4. Allows the REEB to revoke, suspend, or limit the real estate license or certificate of a person who submits false information on either form or who fails to pay a forfeiture imposed by the REEB for doing so.

Immunity for employing brokers in certain actions

Under current law, each broker must supervise, and is responsible for, the brokerage services provided on behalf of the broker by any broker, salesperson, or time–share salesperson who is an employee of the broker.

This bill provides that an employing broker that hires an individual who has a real estate license or certificate and who has committed a crime under the laws of this state or another wrongful act may not be held civilly liable for hiring that individual in a negligent hiring claim if, regardless of whether the employing broker conducted its own investigation, the employing broker relied on the investigations conducted by the Department of Safety and Professional Services or on a determination by the REEB. A negligent hiring claim is an action brought under the common law under which an employer may be held liable for failing to exercise reasonable care when hiring an employee, such as by failing to conduct an adequate background investigation of the employee, if the employee subsequently commits a wrongful act.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 440.03 (13) (bm) of the statutes is created to read:

2 440.03 **(13)** (bm) Upon a request by the real estate examining board, the
3 department may conduct an investigation to determine whether an individual
4 seeking a determination by the real estate examining board under the rules
5 promulgated under s. 452.07 (2) has an arrest or conviction record. In conducting an
6 investigation under this paragraph, the department may require an individual to
7 provide any information that is necessary for the investigation.

8 **SECTION 2.** 452.01 (3p) of the statutes is created to read:

9 452.01 **(3p)** "Crime" does not include a crime for which the individual has been
10 pardoned; a crime for which the conviction has been reversed, set aside, or vacated;
11 or a crime for which the conviction has been expunged under s. 973.015.

12 **SECTION 3.** 452.01 (4) of the statutes is amended to read:

452.01 **(4)** "Disciplinary proceeding" means a proceeding against one or more licensees or registrants in which the board may revoke, suspend, or limit a license or registration, reprimand a licensee or registrant, issue a private letter of warning to a licensee or registrant, or assess a forfeiture or require education or training under s. 452.14 (4m) or (4r).

SECTION 4. 452.01 (4v) of the statutes is created to read:

452.01 **(4v)** "Felony" means a felony under the laws of this state or a crime committed elsewhere that would be a felony if committed in this state. "Felony" does not include a felony for which the applicant has been pardoned; a felony for which the conviction has been reversed, set aside, or vacated; or a felony for which the conviction has been expunged under s. 973.015.

SECTION 5. 452.025 (5) (b) of the statutes is amended to read:

452.025 **(5)** (b) An application to renew a certificate of registration granted under this section shall, on or before the applicable renewal date specified under s. 440.08 (2) (a), be submitted with the applicable renewal fee determined by the department under s. 440.03 (9) (a) ~~on or before the applicable renewal date specified under s. 440.08 (2) (a)~~ and a completed copy of the form under s. 452.05 (1) (i).

SECTION 6. 452.05 (1) (h) of the statutes is created to read:

452.05 **(1)** (h) If the board promulgates rules under s. 452.07 (2), create a form on which an individual applying for a determination under those rules may do all of the following:

1. State whether he or she has ever been convicted of a crime.

2. Identify the date of conviction for any crime described under subd. 1. and describe the nature and circumstances of the crime.

1 3. Sign his or her name to attest to the accuracy and truthfulness of the
2 information under subds. 1. and 2. and to acknowledge the department's authority
3 to conduct an investigation under s. 440.03 (13).

4 **SECTION 7.** 452.05 (1) (i) of the statutes is created to read:

5 452.05 **(1)** (i) Create a form on which an individual applying to renew a broker's
6 or salesperson's license or a time–share salesperson's certificate of registration may
7 do all of the following:

8 1. State whether he or she has been convicted of a crime since he or she last
9 applied to renew the license or certificate or, for an initial renewal, since he or she
10 initially applied for the license or certificate.

11 2. Identify the date of conviction for any crime described under subd. 1. and
12 describe the nature and circumstances of the crime.

13 3. Sign his or her name to attest to the accuracy and truthfulness of the
14 information under subds. 1. and 2. and to acknowledge all of the following:

15 a. The department's authority to conduct an investigation under s. 440.03 (13).

16 b. The board's authority to revoke the license or certificate under s. 452.14 (3)
17 (o).

18 c. The board's authority to assess forfeitures under s. 452.14 (4r).

19 **SECTION 8.** 452.07 (2) of the statutes is created to read:

20 452.07 **(2)** The board may promulgate rules establishing a procedure that
21 allows an individual who does not possess a broker's or salesperson's license or a
22 time–share salesperson's certificate of registration to, without submitting a full
23 application and without paying the fees applicable to applicants, apply to the board
24 for a determination of whether the individual would be disqualified from obtaining
25 a license or certificate due to his or her criminal record. A determination made under

this subsection, with respect to criminal convictions reviewed by the board as part of the determination, is binding upon the board and the department if the individual subsequently applies for a license or certificate, unless there is information relevant to the determination that was not available to the board at the time of the determination.

SECTION 9. 452.12 (3) of the statutes is amended to read:

452.12 **(3)** (a) ~~Each~~ Subject to s. 452.139 (3), each broker shall supervise, and is responsible for, the brokerage services provided on behalf of the broker by any broker, salesperson, or time–share salesperson who is an employee of the broker.

SECTION 10. 452.12 (5) (d) of the statutes is created to read:

452.12 **(5)** (d) At the time of renewal, each broker or salesperson who is an individual shall complete the form under s. 452.05 (1) (i).

SECTION 11. 452.139 (3) of the statutes is created to read:

452.139 **(3)** LIABILITY FOR NEGLIGENT HIRING. An employing broker that hires an individual who is licensed or registered under this chapter and who, subsequent to being hired, commits a crime under the laws of this state or another wrongful act may not be held civilly liable for hiring that individual in a claim brought for negligent hiring if, regardless of whether the employing broker conducted its own investigation, the employing broker relied on the investigations conducted by the department under s. 440.03 (13) or on any determination made by the board, including a determination under s. 452.07 (2) or 452.25.

SECTION 12. 452.14 (2m) of the statutes is created to read:

452.14 **(2m)** The board shall conduct disciplinary proceedings in accordance with the rules adopted under s. 440.03 (1).

SECTION 13. 452.14 (3) (intro.) of the statutes is amended to read:

452.14 **(3)** (intro.) ~~Disciplinary proceedings shall be conducted by the board according to rules adopted under s. 440.03 (1).~~ The board may revoke, suspend or limit any broker's, salesperson's, or time–share salesperson's license or registration, or reprimand the holder of the license or registration, if it finds that the holder of the license or registration has:

SECTION 14. 452.14 (3) (o) of the statutes is created to read:

452.14 **(3)** (o) Violated s. 452.25 (2) (a) or failed to pay any forfeiture assessed by the board under sub. (4r) for such a violation.

SECTION 15. 452.14 (3m) of the statutes is created to read:

452.14 **(3m)** Notwithstanding sub. (3), the board shall revoke a broker's, salesperson's, or time–share salesperson's license or registration if it finds that the holder of the license or registration has been convicted of a felony that is a bar to licensure or registration under s. 452.25 (1) (a).

SECTION 16. 452.14 (4r) of the statutes is created to read:

452.14 **(4r)** The board may assess against an individual who is licensed or registered under this chapter a forfeiture of $1,000 for a violation under s. 452.25 (2) (a).

SECTION 17. 452.15 of the statutes is renumbered 452.15 (1) and amended to read:

452.15 **(1)** ~~No~~ Except as otherwise provided in sub. (2), no license or certificate of registration may be issued under this chapter to any person whose license or certificate under this chapter has been revoked until the expiration of a period determined in each case by the board or, in the case of revocation under s. 452.17 (4) (a) 2., a period determined in each case by the board of not less than 5 years from the date the revocation became finally effective.

1 **SECTION 18.** 452.15 (2) of the statutes is created to read:

2 452.15 **(2)** Issuance of a license or certificate of registration to an individual
3 whose license or certificate is revoked under s. 452.14 (3m) is subject to the provisions
4 in s. 452.25 (1).

5 **SECTION 19.** 452.25 of the statutes is created to read:

6 **452.25 Criminal convictions and disclosures. (1)** FELONY CONVICTIONS.
7 (a) Notwithstanding ss. 111.321, 111.322, and 111.335, and except as provided in
8 pars. (b) to (e), no applicant who is an individual may be issued a broker's or
9 salesperson's license or a time–share salesperson's certificate of registration if the
10 applicant has been convicted of a felony.

11 (b) If an applicant has been convicted of a felony described under par. (a); the
12 applicant has completed his or her sentence, including any probation, parole, or
13 extended supervision; and 5 years have elapsed since the date on which the sentence
14 was completed, the applicant may apply to the board for a determination as to
15 whether the applicant is suitable to be granted a license or certificate.

16 (c) If an applicant applies for a determination under par. (b), the board may
17 require the applicant to provide any information that is necessary for the
18 investigation and shall make a determination by doing all of the following:

19 1. Reviewing any information relating to the felony.

20 2. Reviewing any supplemental information provided by the applicant bearing
21 upon his or her suitability for licensure as a broker or salesperson or for registration
22 as a time–share salesperson.

23 3. Considering all of the following factors:

24 a. The severity and nature of the felony.

25 b. The amount of time that has elapsed.

1 c. The number or pattern of felonies or other similar incidents that gave rise
2 to the felony conviction.
3 d. The circumstances surrounding the felony that may have a bearing on
4 whether the applicant might repeat the behavior that was the subject of the felony.
5 e. The relationship of the felony to real estate practice.
6 f. The applicant's activities since the felony, including employment, education,
7 participation in treatment, payment of restitution, and any other factor that may be
8 evidence of rehabilitation.
9 (d) With respect to a determination under par. (c), the applicant bears the
10 burden of demonstrating his or her suitability for licensure or registration.
11 (e) If the board makes a determination under par. (c) to allow an applicant to
12 be granted a broker's or salesperson's license or a time–share salesperson's
13 certificate of registration, the applicant shall be granted the license or certificate if
14 the applicant satisfies all other requirements for granting the license or certificate
15 of registration.
16 **(2)** FALSE AFFIRMATIONS. (a) No person may intentionally submit any false
17 information on a form created by the board under s. 452.05 (1) (h) or (i).
18 (b) No applicant may be issued an initial broker's or salesperson's license or
19 time–share salesperson's certificate of registration, and no applicant may renew
20 such a license or certificate, if the applicant has violated par. (a) and failed to pay any
21 forfeiture assessed by the board under s. 452.14 (4r) for that violation.
22 **SECTION 20. Initial applicability.**
23 (1) FELONY DISQUALIFICATION.
24 (a) *Initial licenses and certificates.* The treatment of section 452.25 (1) (with
25 respect to applications for an initial license or registration) of the statutes first

1 applies to an initial license or registration under chapter 452 of the statutes that is
2 issued on the effective date of this paragraph.

3 (b) *License and certificate renewals.* The treatment of section 452.25 (1) of the
4 statutes first applies to an applicant who renews a license or registration under
5 chapter 452 of the statutes on the effective date of this paragraph.

6 (2) CRIMINAL CONVICTION DISCLOSURE FORM. The treatment of sections 452.025
7 (5) (b), 452.05 (1) (i), and 452.12 (5) (d) of the statutes first applies to an applicant who
8 renews a license or registration under chapter 452 of the statutes on the effective
9 date of this subsection.

10 (3) LICENSE AND CERTIFICATE REVOCATIONS. The treatment of section 452.14 (3m)
11 of the statutes first applies to a judgment of conviction entered on the effective date
12 of this subsection.

13 **(END)**

Barman, Mike

From: Rossetto, Matt
Sent: Tuesday, January 07, 2014 1:36 PM
To: LRB.Legal
Subject: Draft Review: LRB -3915/1 Topic: Changes regarding licenses issued by the Real Estate Boards to individuals with criminal records

Please Jacket LRB -3915/1 for the ASSEMBLY.

Memo

To: Representative Knudson *(The Draft's Requester)*

Per your request ... the attached fiscal estimate was prepared for your un–introduced 2013 session draft.

LRB Number: **LRB–3915**

Version: **" /1 " (original)**

Fiscal Estimate Prepared By: (agency abbr.) **DSPS**

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

* *

Entered In Computer And Copy Sent To Requester Via E–Mail: 01 / 15 / 2013

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Un–introduced Draft*

> **If re–drafted ...** please insert this cover sheet and attached early fiscal estimate into the drafting file "guts" ... after the draft's old version (the version that this fiscal estimate was based on), and just before re–draft of the updated version.

> **If introduced ...** please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re–process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013 AB 688

Barman, Mike

From: Barman, Mike
Sent: Wednesday, January 15, 2014 9:23 AM
To: Rep.Knudson
Cc: Rossetto, Matt
Subject: LRB-3915/1 (un-introduced) (FE by DSPS - attached - for your review)

FE-3915_DSPSor...

Drafter: MED
Subject: Occupational Reg. – prof lic

Mike Barman **(Lead Program Assistant)**
State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov