



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment II

LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2013 LRB-3247 (For: Rep. Knudson)

has been copied/added to the drafting file for

2013 LRB-3915 (For: Rep. Knudson)

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



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 02/04/2014 (Per: MED)

The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3247/2
MED:jld:jf

by
1/11/20
Wednesday

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to renumber and amend** 452.15; **to amend** 452.01 (4), 452.025 (5) (b)
 2 and 452.14 (3) (intro.); and **to create** 440.03 (13) (bm), 452.01 (4v), 452.025 (1)
 3 (b) 3m., 452.05 (1) (h), 452.07 (2), 452.09 (1) (dm), 452.12 (5) (d), 452.14 (2m),
 4 452.14 (3m), 452.14 (4r), 452.15 (2) and 452.25 of the statutes; **relating to:**
 5 eligibility for a broker's or salesperson's license or a time-share salesperson's
 6 certificate of registration following a felony conviction, granting rule-making
 7 authority, and providing a penalty. *example* ✓

Analysis by the Legislative Reference Bureau & Ins Analysis ✓

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

8 **SECTION 1.** 440.03 (13) (bm) of the statutes is created to read:
 9 440.03 (13) (bm) Upon a request by the real estate examining board, the
 10 department may conduct an investigation to determine whether a person seeking a
to be insured ✓

1 determination by the real estate examining board under the rules promulgated
2 under s. 452.07 (2) has an arrest or conviction record. In conducting an investigation
3 under this paragraph, the department may require an applicant to provide any
4 information that is necessary for the investigation.

an individual

***NOTE: Does this language fit with your intent? I did not specify whether this precludes DSPS from requiring another background check if the person then later applies for a license or certificate, as I figure that whether that is necessary might vary. If you would like to specify something about that, let me know.

5 SECTION 2. 452.01 (4) of the statutes is amended to read:

6 452.01 (4) "Disciplinary proceeding" means a proceeding against one or more
7 licensees or registrants in which the board may revoke, suspend, or limit a license
8 or registration, reprimand a licensee or registrant, issue a private letter of warning
9 to a licensee or registrant, or assess a forfeiture or require education or training
10 under s. 452.14 (4m) or (4r).

11 SECTION 3. 452.01 (4v) of the statutes is created to read:

12 452.01 (4v) "Felony" means a felony under the laws of this state or a crime
13 committed elsewhere that would be a felony if committed in this state.

***NOTE: Please review this definition of what constitutes a felony.

14 SECTION 4. 452.025 (1) (b) 3m. of the statutes is created to read:

15 452.025 (1) (b) 3m. A completed copy of the form under s. 452.05 (1) (h).

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

17 452.025 (5) (b) An application to renew a certificate of registration granted
18 under this section shall, on or before the applicable renewal date specified under s.
19 440.08 (2) (a), be submitted with the applicable renewal fee determined by the
20 department under s. 440.03 (9) (a) ~~on or before the applicable renewal date specified~~
21 ~~under s. 440.08 (2) (a) and a completed copy of the form under s. 452.05 (1) (h).~~ (i)

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

452.07(2)

an individual

1 452.05 (1) (h) Create a form on which an applicant for an initial broker's or
2 salesperson's license or a time-share salesperson's certificate of registration, an
3 applicant applying to renew a license or certificate, or a person applying for a
4 determination under the rules promulgated under s. 440.03 (13) (bm), may do all of
5 the following:

- 6 1. State whether he or she has ever been convicted of a felony. ^{crime} ✓
- 7 2. Identify the date of conviction for any felony for which the applicant was
8 convicted and describe the nature and circumstances of the felony. ^{crime described under subd. 1.} ✓ ^{crime} ✓
- 9 3. Sign his or her name to attest to the accuracy and truthfulness of the
10 information under subds. 1. and 2. and to acknowledge the department's authority
11 to conduct an investigation under s. 440.03 (13). Ins 3-11 ✓

****NOTE: Please review this provision. I provided that the person must state whether he or she has been convicted of a felony and to describe the felony, instead of an affirmation that he or she has not been, because it might be the case that someone who has a felony conviction for which more than 5 years have elapsed since sentence completion might be applying for a determination of whether that felony is a bar to licensure. I also included the acknowledgement about background checks here. Finally, I provided that this form may be used for persons seeking a determination under the pre-application process. Will this work?

12 SECTION 7. 452.07 (2) of the statutes is created to read:

13 452.07 (2) The board may promulgate rules establishing a procedure that
14 allows a person who does not possess a broker's or salesperson's license or a
15 time-share salesperson's certificate of registration to, without submitting a full
16 application and without paying the fees applicable to applicants, apply to the board
17 for a determination of whether the person would be disqualified under s. 452.25 (1)
18 from obtaining a license or certificate. The board shall provide in any rules
19 promulgated under this subsection, with respect to felony convictions reviewed by
20 the board as part of the determination, that the determination is binding upon the
21 board and the department if the person subsequently applies for a license or

1 certificate, unless there is information relevant to the determination that was not
2 available to the board at the time of the determination.

~~***NOTE: Please review this provision. You may want to re-word this somewhat.~~

3 SECTION 8. ~~452.09 (1) (dm)~~ of the statutes is created to read:

4 452.09 (1) (dm) A completed copy of the form under s. 452.05 (1) (h).

Keep
Step 5

5 SECTION 9. 452.12 (5) (d) of the statutes is created to read:

do not delete

6 452.12 (5) (d) At the time of renewal, each broker or salesperson shall complete

7 the form under s. 452.05 (1) (h) ⁽ⁱ⁾

who is an individual

8 SECTION 10. 452.14 (2m) of the statutes is created to read:

9 452.14 (2m) The board shall conduct disciplinary proceedings in accordance
10 with the rules adopted under s. 440.03 (1).

11 SECTION 11. 452.14 (3) (intro.) of the statutes is amended to read:

12 452.14 (3) (intro.) ~~Disciplinary proceedings shall be conducted by the board~~
13 ~~according to rules adopted under s. 440.03 (1).~~ The board may revoke, suspend or
14 limit any broker's, salesperson's, or time-share salesperson's license or registration,
15 or reprimand the holder of the license or registration, if it finds that the holder of the
16 license or registration has:

17 SECTION 12. 452.14 (3m) of the statutes is created to read:

18 452.14 (3m) Notwithstanding sub. (3), the board shall revoke a broker's,
19 salesperson's, or time-share salesperson's license or registration if it finds that the
20 holder of the license or registration has done any of the following: ^{been} **(NO 4)**

21 ^{Not} (a) Been convicted of a felony that is a bar to licensure or registration under s.
22 452.25 (1) (a).

INS ✓
4-16 ✓
A ✓
INS ✓
from
P ✓
5 ✓
INS ✓
4-16 ✓
8

***NOTE: This requires the REEB to revoke a license or registration for a felony conviction, in contrast to sub. (3), which allows, but does not require, the REEB to discipline a person under certain circumstances.

Inse⁵ F J
(MOR + F. 4)

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4 (b) ^{452.14 (3) (c) ✓} Violated s. 452.25 (2) ^(a) and failed to pay any forfeiture assessed by the board under sub. (4r) for that violation. ✓ (end ins J)

****NOTE: This requires the REEB to revoke a license or registration for submitting a false criminal record affirmation and not paying the fee.

SECTION 13. 452.14 (4r) of the statutes is created to read: ✓

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

****NOTE: I raised some questions with Matt about the provision requested with regards to the assessment of a penalty for a false affirmation. In completing the request, I subsequently noticed that, under s. 452.14 (4m), stats., the REEB already has the authority to assess forfeitures directly. I therefore added language so that the REEB may impose a forfeiture for submitting a false affirmation and that a failure to pay such a forfeiture is grounds for mandatory revocation.

SECTION 14. 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.

SECTION 15. 452.15 (2) of the statutes is created to read:

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

SECTION 16. 452.25 of the statutes is created to read:

452.25 ^{Criminal} **Felony convictions and disclosures.** (1) FELONY CONVICTIONS. (a) Notwithstanding ss. 111.321, 111.322, and 111.335, and except as provided in pars.

1 (b) to ^{✓ g (c)} (f), no applicant ^{who is an individual ✓} may be issued a broker's or salesperson's license or a
 2 time-share salesperson's certificate of registration if the applicant has been
 3 convicted of a felony. The prohibition under this paragraph does not apply with
 4 respect to a felony for which an applicant has been pardoned.

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

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

- 13 1. Reviewing any information relating to the felony.
- 14 2. Reviewing any supplemental information provided by the applicant bearing
 15 upon his or her suitability for licensure as a broker or salesperson <sup>or for registration as
a time-share salesperson ✓</sup>
- 16 3. Considering all of the following factors:
 - 17 a. The severity and nature of the felony.
 - 18 b. The amount of time that has elapsed.
 - 19 c. The number or pattern of felonies or other similar incidents that gave rise
 20 to the felony conviction.
 - 21 d. The circumstances surrounding the felony that may have a bearing on
 22 whether the applicant might repeat the behavior that was the subject of the felony.
 - 23 e. The relationship of the felony to real estate practice.

1 f. The applicant's activities since the felony, including employment, education,
2 participation in treatment, payment of restitution, and any other factor that may be
3 evidence of rehabilitation.

4 (d) With respect to a determination under par. (c), the applicant, broker,
5 salesperson, or time-share salesperson, bears the burden of demonstrating his or her
6 suitability for licensure or certification. ^{registration}

7 (e) If the board makes a determination under par. (c) to allow an applicant to
8 be granted a broker's or salesperson's license or a time-share salesperson's
9 certificate of registration, the applicant shall be granted the license or certificate if
10 the applicant is otherwise eligible. ^{is otherwise eligible for granting}
^{the license or certificate of registration.}

11 (2) FALSE AFFIRMATIONS. (a) No person may intentionally submit any false
12 information on the ^{form} created by the board under s. 452.05 (1) (h) ^{or (i).}

13 (b) No applicant may be issued ^{an initial} (a) broker's or salesperson's license or (a)
14 time-share salesperson's certificate of registration ^{and no applicant may renew such a license} if the applicant has violated par.

15 (a) ^{and} failed to pay any forfeiture assessed by the board under s. 452.14 (4r) for that
16 violation.

17 **SECTION 17. Initial applicability.**

18 (1) FELONY DISQUALIFICATION.

19 (a) *Initial licenses and certificates.* The treatment of section 452.25 (1) (with
20 respect to applications for an initial license or registration) of the statutes first
21 applies to an initial license or registration under chapter 452 of the statutes that is
22 issued on the effective date of this subsection. ^{paragraph}

23 (b) *License and certificate renewals.* Except as provided in paragraph (c), the
24 treatment of section 452.25 (1) (with respect to applications for a license or certificate

or certificate

SECTION 17

1 renewal of the statutes first applies to an applicant seeking to renew a license or
2 registration under chapter 452 of the statutes on December 15, 2016.

****NOTE: Under subsection (2), currently registered or certified individuals would first have to fill out the felony disclosure form when they renew for the next biennium beginning 12/15/14. I therefore provided here that the felony conviction disqualifier itself would first apply to the biennium beginning 12/15/16, except that late renewals would be subject to immediate disqualification. Is this consistent with your intent?

3 (c) Late renewals. The treatment of section 452.25 (1) (with respect to
4 applications for a license or registration renewal under section 440.08 (3) of the
5 statutes) of the statutes first applies to an applicant seeking to renew a license or
6 registration under chapter 452 of the statutes on the effective date of this subsection.

7 (2) FELONY DISCLOSURE FORM. ^{CRIMINAL CONVICTIONS} No fi

8 (a) Initial licenses and certificates. The treatment of sections 452.025 (1) (b)
9 3m., 452.05 (1) (h) (with respect to applications for an initial license or registration),
10 and 452.09 (1) (dm) of the statutes first applies to an initial license or registration
11 under chapter 452 of the statutes that is issued on the effective date of this
12 subsection.

13 ~~(b) License and certificate renewals. Except as provided in paragraph (c), the~~
14 ~~treatment of sections 452.025 (5) (b), 452.05 (1) (h), and 452.12 (5) (d) (with respect~~
15 ~~to applications for a license or registration renewal) of the statutes first applies to~~
16 ~~an applicant seeking to renew a license or registration under chapter 452 of the~~
17 ~~statutes on December 15, 2014.~~

18 (c) Late renewals. The treatment of sections 452.025 (5) (b), 452.05 (1) (h), and
19 452.12 (5) (d) (with respect to applications for a license or registration renewal under
20 section 440.08 (3) of the statutes) of the statutes first applies to an applicant seeking
21 to renew a license or registration under chapter 452 of the statutes on the effective
22 date of this subsection.

***NOTE: These provisions require the felony disclosure form to be filled out immediately for new applicants and late renewals and, for renewals that are not late, for the next renewal date on 12/15/14. Is this consistent with your intent?

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

***NOTE: With regards to the REEB's authority to revoke licenses due to a felony conviction, I provided that the revocation provision would first apply to felony convictions entered on the bill's effective date. The power to revoke, therefore, would only apply prospectively, and older convictions would be addressed under the provisions pertaining to renewal under subsection (1) (b) and (c).

4 **SECTION 18. Effective date.**
5 (1) This act takes effect on the first day of the 6th month beginning after
6 publication.

***NOTE: I included a delayed effective date to give the REEB time to at least create the form under SECTION 6 of the bill. I can modify or eliminate this date as needed.

7 (END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3247/P2ins
MED:jld:jf

INSERT ANALYSIS

notwithstanding the Fair Employment Law

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).^(a)

Under this bill, no person may be issued 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 allows the REEB to, by rule, establish a preapplication procedure that allows a person who does not possess a real estate license or certificate to, without submitting a full application and without paying the fees applicable to applicants, 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. 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.

procedure



2. Allows the board 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.[✓]

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

INSERT 2-4

1

SECTION 1. 452.01 (3^p)[✓] of the statutes is created to read:

2

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

***NOTE: See the definitions here for "crime" and, below, "felony."[✓]

INSERT 2-13

5

NO
A

"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.[✓]

6

7

INSERT 3-11

8

SECTION 2. 452.05 (1) (i)[✓] of the statutes is created to read:

9

452.05 (1) (i) Create a form on which an individual applying to renew a broker's or salesperson's license or a time-share salesperson's certificate[✓] of registration may do all of the following:[✓]

10

11

12

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

13

14

15

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

16



- 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 all of the following:
- 3 a. The department's authority to conduct an investigation under s. 440.03 (13).
4 b. The board's authority to revoke the license or certificate under s. 452.14 (3)
5 (o).
6 c. The board's authority to assess forfeitures under s. 452.14 (4r).

****NOTE: This provision requires the REEB to create a separate form/affirmation for renewals.

INSERT 4-16A

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

INSERT 4-16B

****NOTE: The instructions provided that the REEB should have the flexibility to determine whether to revoke a license. I therefore simply moved that provision to s. 452.14 (3), which allows the REEB to 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. Is that OK? Also note that this still references only people who lied and failed to pay the forfeiture. *

Duchek, Michael

From: Rossetto, Matt
Sent: Monday, December 02, 2013 2:58 PM
To: Duchek, Michael
Subject: RE: New felons draft

Perfect, thanks. Go ahead and make the change in #3. Looks like everything else is good.

From: Duchek, Michael
Sent: Monday, December 02, 2013 2:54 PM
To: Rossetto, Matt
Subject: RE: New felons draft

OK now that I've had a chance to look at this a little more, see below. There was one thing they mentioned that we didn't talk about on the phone so I just put everything below in red.

-Mike

From: Rossetto, Matt
Sent: Monday, December 02, 2013 12:29 PM
To: Duchek, Michael
Subject: FW: New felons draft

From: Cori M. Lamont [<mailto:CoriL@wra.org>]
Sent: Monday, December 02, 2013 12:04 PM
To: Rossetto, Matt; Larson, Tom
Subject: RE: New felons draft

Hi Matt,

I hope you had a nice holiday.

I have one item before we get into the draft. Previously we proposed to also include a statement about the hiring by a broker-employer of a licensee who has a criminal conviction, for example: *An employing broker cannot be held liable for hiring an individual that has committed a misdemeanor or felony under the laws of this state if the state has issued a license because the broker-employer is entitled to rely upon the determination of the state and the board.*

Draft comments:

- 1) The summary on page 2, in the paragraph that carries over from page 1. The second to last sentence – "In addition, the bill requires the REEB to revoke a person's real estate license..." I am not sure that is correct based on the language in this current bill draft (see page 6, section 11) Just to mention it again, this is Section 13. not 11/12.
- 2) Page 3, lines 14-15: Please note that SB 345/AB 433 sections 53 and 54 remove the private letter of warning from disciplinary proceeding. I am not sure how this can be addressed, but I just wanted to point it out. When two acts affect the same statute, we (the LRB) have the authority to make both changes to the same statute (we call this a "merger"), as long as they work mechanically together and don't conflict, which, it appears, would be the case here. So that's what we'd most likely do.

- 3) Page 5, section 8, lines 13-18. This section of the bill provides that the board may promulgate rules to establish the pre-application process. However, on line 13 it states that the board must provide in those rules, if promulgated, that the decision of the board is binding in the future.

Question for the drafter, what if the board fails to put the binding language into the rule?

I would rather see the language about the board's decision being binding be provided for in the statute, no matter what language the board puts in the rule. While I think that if the Board failed to do this, they would be violating the statute, I could simply change the language to instead *directly* say that a determination is binding and I don't see any problem with doing that if you want me to make that change.

- 4) Page 6, Section 12 – drafter's note. I am not sure what is accomplished by deleting the language on lines 4-5 and have no objection. It does not appear to create a vulnerability to the board by its removal. I did not delete this language, I just moved it to its own subsection (see Section 10) so it wouldn't look like this language *only* applied to revocations under s. 452.14 (3), as we will now also have the (mandatory) revocations under s. 452.14 (3m) as well (Section 13). According to my notes from the last draft line 10 upon the request of DSPS, "and" was to be changed to "or". That change which we agreed was fine, has not been made. I think this change is fine ("and" to "or") and I will do that.
- 5) Section 17, sub. (b) and (c), – requested clarification from the drafter.

Will every felon applicant be required to apply to the board for a determination if they want to obtain a license? Line 20 says "the applicant may apply to the board for a determination as to whether the applicant is suitable to be granted a license or certificate" and then in sub (c) provides required factors for the board to consider. As we discussed, felons are not required to, and may not want to if they just decide they want to let their license lapse. But if they do want to keep their license, they will need to get a determination by the Board, otherwise paragraph (a) is the default (disqualified).

On line 20, should the may be shall?

I could be overthinking this...

Please let me know if you have any questions.

Cori

Cori M. Lamont
Director of Regulatory Affairs
Wisconsin REALTORS® Association
4801 Forest Run Road
Madison, WI 53704
tel: 608-241-2047 | fax: 608-241-5168 | www.wra.org

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From: Rossetto, Matt [<mailto:Matt.Rossetto@legis.wisconsin.gov>]
Sent: Tuesday, November 26, 2013 2:12 PM
To: Cori M. Lamont; Larson, Tom
Subject: New felons draft

Attached. Happy Thanksgiving!

Matt

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

Duchek, Michael

From: Rossetto, Matt
Sent: Monday, December 02, 2013 2:20 PM
To: Duchek, Michael
Subject: LRB 3247

Go ahead and draft with the changes we discussed earlier; we will not be doing the hold harmless provision. Let me know if you have questions.

Thank you!

Matt

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



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3247/2
MED:jld:jf

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

2013 BILL

Insert

X

1 AN ACT ^{Regs} to renumber and amend 452.15; to amend 452.01 (4), 452.025 (5) (b)
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3 452.05 (1) (h), 452.05 (1) (i), 452.07 (2), 452.12 (5) (d), 452.14 (2m), 452.14 (3)
4 (o), 452.14 (3m), 452.14 (4r), 452.15 (2) and 452.25 of the statutes; relating to:
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7 rule-making authority, and providing a penalty. ✓

Analysis by the Legislative Reference Bureau

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.

authorizes
the
preapplication
procedure

The bill also allows the REEB to, by rule, establish a preapplication procedure that allows a person who does not possess a real estate license or certificate to 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 board 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.

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

✓
105
A

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

1 440.03 (13) (bm) Upon a request by the real estate examining board, the
2 department may conduct an investigation to determine whether an individual
3 seeking a determination by the real estate examining board under the rules
4 promulgated under s. 452.07 (2) has an arrest or conviction record. In conducting an
5 investigation under this paragraph, the department may require an individual to
6 provide any information that is necessary for the investigation.

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

8 452.01 (3p) "Crime" does not include a crime for which the individual has been
9 pardoned; a crime for which the conviction has been reversed, set aside, or vacated;
10 or a crime for which the conviction has been expunged under s. 973.015.

****NOTE: See the definitions here for "crime" and, below, "felony."

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

12 452.01 (4) "Disciplinary proceeding" means a proceeding against one or more
13 licensees or registrants in which the board may revoke, suspend, or limit a license
14 or registration, reprimand a licensee or registrant, issue a private letter of warning
15 to a licensee or registrant, or assess a forfeiture or require education or training
16 under s. 452.14 (4m) or (4r).

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

18 452.01 (4v) "Felony" means a felony under the laws of this state or a crime
19 committed elsewhere that would be a felony if committed in this state. "Felony" does
20 not include a felony for which the applicant has been pardoned; a felony for which
21 the conviction has been reversed, set aside, or vacated; or a felony for which the
22 conviction has been expunged under s. 973.015.

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

1 452.025 (5) (b) An application to renew a certificate of registration granted
2 under this section shall, on or before the applicable renewal date specified under s.
3 440.08 (2) (a), be submitted with the applicable renewal fee determined by the
4 department under s. 440.03 (9) (a) ~~on or before the applicable renewal date specified~~
5 ~~under s. 440.08 (2) (a) and a completed copy of the form under s. 452.05 (1) (i).~~

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

7 452.05 (1) (h) If the board promulgates rules under s. 452.07 (2), create a form
8 on which an individual applying for a determination under those rules may do all of
9 the following:

- 10 1. State whether he or she has ever been convicted of a crime.
- 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 the department's authority
15 to conduct an investigation under s. 440.03 (13).

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

17 452.05 (1) (i) Create a form on which an individual applying to renew a broker's
18 or salesperson's license or a time-share salesperson's certificate of registration may
19 do all of the following:

- 20 1. State whether he or she has been convicted of a crime since he or she last
21 applied to renew the license or certificate or, for an initial renewal, since he or she
22 initially applied for the license or certificate.
- 23 2. Identify the date of conviction for any crime described under subd. 1. and
24 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 all of the following:
- 3 a. The department's authority to conduct an investigation under s. 440.03 (13).
- 4 b. The board's authority to revoke the license or certificate under s. 452.14 (3)
- 5 (o).
- 6 c. The board's authority to assess forfeitures under s. 452.14 (4r).

****NOTE: This provision requires the REEB to create a separate form/affirmation for renewals.

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

8 452.07 (2) The board may promulgate rules establishing a procedure that

9 allows an individual who does not possess a broker's or salesperson's license or a

10 time-share salesperson's certificate of registration to, without submitting a full

11 application and without paying the fees applicable to applicants, apply to the board

12 for a determination of whether the individual would be disqualified from obtaining

13 a license or certificate due to his or her criminal record. The board shall provide in

14 any rules promulgated under this subsection, with respect to criminal convictions

15 reviewed by the board as part of the determination, that the determination is binding

16 upon the board and the department if the individual subsequently applies for a

17 license or certificate, unless there is information relevant to the determination that

18 was not available to the board at the time of the determination.

19 **SECTION 9.** 452.12 (5) (d) of the statutes is created to read:

20 452.12 (5) (d) At the time of renewal, each broker or salesperson who is an

21 individual shall complete the form under s. 452.05 (1) (i).

22 **SECTION 10.** 452.14 (2m) of the statutes is created to read:

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

3 **SECTION 11.** 452.14 (3) (intro.) of the statutes is amended to read:

4 452.14 (3) (intro.) ~~Disciplinary proceedings shall be conducted by the board~~
5 ~~according to rules adopted under s. 440.03 (1).~~ The board may revoke, suspend or
6 limit any broker's, salesperson's, or time-share salesperson's license or registration,
7 or reprimand the holder of the license or registration, if it finds that the holder of the
8 license or registration has:

9 **SECTION 12.** 452.14 (3) (o) of the statutes is created to read:

10 452.14 (3) (o) Violated s. 452.25 (2) (a) ^{or} and failed to pay any forfeiture assessed
11 by the board under sub. (4r) for ^{such a} that violation. ✓

****NOTE: The instructions provided that the REEB should have the flexibility to determine whether to revoke a license. I therefore simply moved that provision to s. 452.14 (3), which allows the REEB to 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. Is that OK? Also note that this still references only people who lied and failed to pay the forfeiture.

12 **SECTION 13.** 452.14 (3m) of the statutes is created to read:

13 452.14 (3m) Notwithstanding sub. (3), the board shall revoke a broker's,
14 salesperson's, or time-share salesperson's license or registration if it finds that the
15 holder of the license or registration has been convicted of a felony that is a bar to
16 licensure or registration under s. 452.25 (1) (a).

17 **SECTION 14.** 452.14 (4r) of the statutes is created to read:

18 452.14 (4r) The board may assess against an individual who is licensed or
19 registered under this chapter a forfeiture of \$1,000 for a violation under s. 452.25 (2)
20 (a).

21 **SECTION 15.** 452.15 of the statutes is renumbered 452.15 (1) and amended to
22 read:

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

7 **SECTION 16.** 452.15 (2) of the statutes is created to read:

8 452.15 (2) Issuance of a license or certificate of registration to an individual
9 whose license or certificate is revoked under s. 452.14 (3m) is subject to the provisions
10 in s. 452.25 (1).

11 **SECTION 17.** 452.25 of the statutes is created to read:

12 **452.25 Criminal convictions and disclosures. (1) FELONY CONVICTIONS.**

13 (a) Notwithstanding ss. 111.321, 111.322, and 111.335, and except as provided in
14 pars. (b) to (e), no applicant who is an individual may be issued a broker's or
15 salesperson's license or a time-share salesperson's certificate of registration if the
16 applicant has been convicted of a felony.

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

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

25 1. Reviewing any information relating to the felony.

1 2. Reviewing any supplemental information provided by the applicant bearing
2 upon his or her suitability for licensure as a broker or salesperson or for registration
3 as a time-share salesperson.

4 3. Considering all of the following factors:

5 a. The severity and nature of the felony.

6 b. The amount of time that has elapsed.

7 c. The number or pattern of felonies or other similar incidents that gave rise
8 to the felony conviction.

9 d. The circumstances surrounding the felony that may have a bearing on
10 whether the applicant might repeat the behavior that was the subject of the felony.

11 e. The relationship of the felony to real estate practice.

12 f. The applicant's activities since the felony, including employment, education,
13 participation in treatment, payment of restitution, and any other factor that may be
14 evidence of rehabilitation.

15 (d) With respect to a determination under par. (c), the applicant bears the
16 burden of demonstrating his or her suitability for licensure or registration.

17 (e) If the board makes a determination under par. (c) to allow an applicant to
18 be granted a broker's or salesperson's license or a time-share salesperson's
19 certificate of registration, the applicant shall be granted the license or certificate if
20 the applicant satisfies all other requirements for granting the license or certificate
21 of registration.

22 **(2) FALSE AFFIRMATIONS.** (a) No person may intentionally submit any false
23 information on a form created by the board under s. 452.05 (1) (h) or (i).

24 (b) No applicant may be issued an initial broker's or salesperson's license or
25 time-share salesperson's certificate of registration, and no applicant may renew

1 such a license or certificate, if the applicant has violated par. (a) and failed to pay any
2 forfeiture assessed by the board under s. 452.14 (4r) for that violation.

3 **SECTION 18. Initial applicability.**

4 (1) FELONY DISQUALIFICATION.

5 (a) *Initial licenses and certificates.* The treatment of section 452.25 (1) (with
6 respect to applications for an initial license or registration) of the statutes first
7 applies to an initial license or registration under chapter 452 of the statutes that is
8 issued on the effective date of this paragraph.

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

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

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

19 (END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3247/lins
MED:jld:jf

INSERT A

4. Allows the REEB[✓] to revoke, suspend, or limit ^{e-the} real estate license or certificate for submitting false information on either form or for failing to pay a forfeiture imposed by the REEB for doing so.[✓]

who fails

of a person who submits

(end ins A)

Duchek, Michael

From: Rossetto, Matt
Sent: Wednesday, December 04, 2013 10:39 AM
To: Duchek, Michael
Subject: RE: Felon draft

Thanks for the clarification. On your first point, yes they can rely on the background check and no they don't get a copy. No further changes.

452.12 (3)

From: Duchek, Michael
Sent: Wednesday, December 04, 2013 7:44 AM
To: Rossetto, Matt
Subject: RE: Felon draft

See red, below.

From: Rossetto, Matt
Sent: Tuesday, December 03, 2013 4:42 PM
To: Duchek, Michael
Subject: FW: Felon draft

This is LRB 3247; can you draft language reflecting what she is asking for in italics?

As far as her comments:

- 1—I don't see inconsistencies in the language, do you?
- 2—No change necessary
- 3—I think she's right on that point.

Let me know if you have questions.

Thanks, Matt

From: Cori M. Lamont [<mailto:CoriL@wra.org>]
Sent: Tuesday, December 03, 2013 4:32 PM
To: Rossetto, Matt; Larson, Tom
Subject: RE: Felon draft

Hi Matt,

As I mentioned on the phone we would like to include the language relating to the hiring of an individual with criminal history. Here is an example of what that language could look like.

An employing broker cannot be held liable for hiring an individual that has committed a misdemeanor or felony under the laws of this state if the state has issued a license because the broker-employer is entitled to rely upon the determination of the state and the board.

OK. I will probably let a courts drafter look at this, but it sounds like you're basically saying that an employing broker can rely upon DSPS's background check, right? Do employing brokers necessarily get a copy of that background check?

We feel this provides a safe harbor for a broker who hires an agent with a criminal background and that person re-offends. Real estate licensees are one of a few professions that actually has access to a person's home or business without the owner or another person being required to be with them. In addition, it is a nice talking point that a broker-

employer should not have to hesitate about hiring someone with a criminal indiscretion in their past, which in turn should be a good thing to highlight for the Dems.

Draft comments:

- 1) I know it's still picky, but in the summary on page 2, in the paragraph that carries over from page 1. The second to last sentence – "In addition, the bill requires the REEB to revoke a person's real estate license..." I am not sure that is correct based on the language in this current bill draft (see page 6, section 11). Isn't this statement incorrect? Am reading the bill wrong?

Look at Section 13, *not* Section 11.

- 2) Page 4, section 7 line 18. Is "may" the proper word? This section requires a form to be created by the board, but says that form may do all of the following? Is that to give the board flexibility to add to or remove some of those items?

I used "may" here in the sense that the form provides a venue for a person to do all of the things that follow. If you prefer I could say "is able to" instead of "may" but I think it means the same thing. The important thing is that completing the form is required under Sections 5 and 9.

- 3) Page 8, line 20. Should the word "and" be an "or" to be consistent with section 12?

Well that would be up to you, but my guess would be that you might not want to make that change. Changing "and" to "or" there would suggest that filing a false affirmation itself is a mandatory/permanent grounds for nonrenewal/nonissuance. Section 12, on the other hand, when read with Section 11, makes it optional for the REEB, meaning that the REEB can (but is not required to) revoke, suspend, or limit a license or registration for filing a false affirmation *or* for not paying a forfeiture for doing so. Does that make sense? If not, give me a call and I can try to explain.

Thank you,

Cori

Cori M. Lamont
Director of Regulatory Affairs
Wisconsin REALTORS® Association
4801 Forest Run Road
Madison, WI 53704
tel: 608-241-2047 | fax: 608-241-5168 | www.wra.org

Information contained in this correspondence does not constitute legal advice and should not be relied upon as legal advice. A determination of one's legal rights can only be obtained after complete analysis of the law and its applicability to one's particular fact situation. Private legal counsel should be consulted if legal advice is needed.

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From: Rossetto, Matt [<mailto:Matt.Rossetto@legis.wisconsin.gov>]
Sent: Tuesday, December 03, 2013 1:34 PM
To: Larson, Tom; Cori M. Lamont
Subject: Felon draft

Hopefully this one is good to go! Let me know.

Matt

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

Duchek, Michael

From: Rossetto, Matt
Sent: Friday, December 06, 2013 11:26 AM
To: Duchek, Michael
Subject: RE: REEB/crimes bill

Hi Mike-

This is exactly what they're looking for, thank you.

Matt

From: Duchek, Michael
Sent: Friday, December 06, 2013 10:53 AM
To: Rossetto, Matt
Subject: REEB/crimes bill

Matt,

Regarding LRB-3247, I did some research about how an employer might be held liable for hiring an employee. From what I can tell, such liability could be imposed if someone brought a court action alleging "negligent hiring," which would require proving that the employer was negligent in hiring an employee by, for example, failing to conduct a background investigation. This kind of action would be brought under the common law (tort law), and the Wisconsin Supreme Court recognized this type of action in *Miller v. Wal-Mart Stores, Inc.*, 219 Wis.2d 250, 580 N.W.2d 233 (1998).

So it sounds like this is what Cori is referring to, and my proposal would be to reference this type of claim in the text of the bill so it's clear what kind of action we're talking about (i.e., "... may not be held civilly liable... in an action brought for negligent hiring"). Does that make sense? I can send you more information about this type of action if it would be helpful.

Mike Duchek
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-0130



State of Wisconsin
2013 - 2014 LEGISLATURE

In 12-6-13

SOON



LRB-32477
MED:jld:rs

2013 BILL

Inserts

Denote

✓ immunity for employing real estate brokers in certain actions

Reger

✓

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

Analysis by the Legislative Reference Bureau

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

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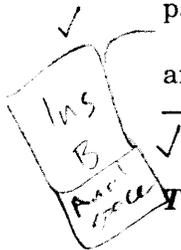
for which the conviction has been reversed, set aside, or vacated; or 3) a felony for which the conviction has been expunged. The bill, however, provides for an exception to the prohibition if five years have elapsed since the person completed the sentence imposed for the felony, including any probation, 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.

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:

BILL

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:

13 452.01 (4) "Disciplinary proceeding" means a proceeding against one or more
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15 or registration, reprimand a licensee or registrant, issue a private letter of warning
16 to a licensee or registrant, or assess a forfeiture or require education or training
17 under s. 452.14 (4m) or (4r).

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

19 452.01 (4v) "Felony" means a felony under the laws of this state or a crime
20 committed elsewhere that would be a felony if committed in this state. "Felony" does
21 not include a felony for which the applicant has been pardoned; a felony for which
22 the conviction has been reversed, set aside, or vacated; or a felony for which the
23 conviction has been expunged under s. 973.015.

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

BILL

1 452.025 (5) (b) An application to renew a certificate of registration granted
2 under this section shall, on or before the applicable renewal date specified under s.
3 440.08 (2) (a), be submitted with the applicable renewal fee determined by the
4 department under s. 440.03 (9) (a) ~~on or before the applicable renewal date specified~~
5 ~~under s. 440.08 (2) (a)~~ and a completed copy of the form under s. 452.05 (1) (i).

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

7 452.05 (1) (h) If the board promulgates rules under s. 452.07 (2), create a form
8 on which an individual applying for a determination under those rules may do all of
9 the following:

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

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

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

17 452.05 (1) (i) Create a form on which an individual applying to renew a broker's
18 or salesperson's license or a time-share salesperson's certificate of registration may
19 do all of the following:

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

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

BILL

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

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

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

5 (o).

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

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

8 452.07 (2) The board may promulgate rules establishing a procedure that
9 allows an individual who does not possess a broker's or salesperson's license or a
10 time-share salesperson's certificate of registration to, without submitting a full
11 application and without paying the fees applicable to applicants, apply to the board
12 for a determination of whether the individual would be disqualified from obtaining
13 a license or certificate due to his or her criminal record. A determination made under
14 this subsection, with respect to criminal convictions reviewed by the board as part
15 of the determination, is binding upon the board and the department if the individual
16 subsequently applies for a license or certificate, unless there is information relevant
17 to the determination that was not available to the board at the time of the
18 determination.

19 **SECTION 9.** 452.12 (5) (d) of the statutes is created to read:

20 452.12 (5) (d) At the time of renewal, each broker or salesperson who is an
21 individual shall complete the form under s. 452.05 (1) (i).

22 **SECTION 10.** 452.14 (2m) of the statutes is created to read:

23 452.14 (2m) The board shall conduct disciplinary proceedings in accordance
24 with the rules adopted under s. 440.03 (1).

25 **SECTION 11.** 452.14 (3) (intro.) of the statutes is amended to read:

✓
Ins
5-18

✓
Ins
5-21

BILL

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

6 **SECTION 12.** 452.14 (3) (o) of the statutes is created to read:

7 452.14 (3) (o) Violated s. 452.25 (2) (a) or failed to pay any forfeiture assessed
8 by the board under sub. (4r) for such a violation.

9 **SECTION 13.** 452.14 (3m) of the statutes is created to read:

10 452.14 (3m) Notwithstanding sub. (3), the board shall revoke a broker's,
11 salesperson's, or time-share salesperson's license or registration if it finds that the
12 holder of the license or registration has been convicted of a felony that is a bar to
13 licensure or registration under s. 452.25 (1) (a).

14 **SECTION 14.** 452.14 (4r) of the statutes is created to read:

15 452.14 (4r) The board may assess against an individual who is licensed or
16 registered under this chapter a forfeiture of \$1,000 for a violation under s. 452.25 (2)
17 (a).

18 **SECTION 15.** 452.15 of the statutes is renumbered 452.15 (1) and amended to
19 read:

20 452.15 (1) ~~No~~ Except as otherwise provided in sub. (2), no license or certificate
21 of registration may be issued under this chapter to any person whose license or
22 certificate under this chapter has been revoked until the expiration of a period
23 determined in each case by the board or, in the case of revocation under s. 452.17 (4)
24 (a) 2., a period determined in each case by the board of not less than 5 years from the
25 date the revocation became finally effective.

BILL

1 **SECTION 16.** 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 17.** 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.

BILL

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 18. 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

BILL

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)

D-note
↓

INSERT A

*Eligibility for licensure or registration by [✓]Real Estate Examining Board
following criminal convictions*

INSERT B

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, in lieu of conducting 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.[✓]

INSERT 5-18

- 1 SECTION 1. 452.12 (3)[✓] of the statutes is amended to read:
2 452.12 (3) (a) ~~Each~~ Subject to s. 452.139[✓](3), each broker shall supervise, and
3 is responsible for, the brokerage services provided on behalf of the broker by any
4 broker, salesperson, or time-share salesperson who is an employee of the broker.

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 264, 399; 1989 a. 307, 341; 1991 a. 39; 1995 a. 27, 400; 1997 a. 27, 191, 237; 2001 a. 16; 2005 a. 87; 2007 a. 20; 2011 a. 32.

INSERT 5-21

- 5 SECTION 2. 452.139 (3)[✓] of the statutes is created to read:
6 452.139 (3) LIABILITY FOR NEGLIGENT HIRING.[✓] An employing broker that hires an
7 individual who is licensed or registered under this chapter[✓] and who, subsequent to
8 being hired, commits a crime under the laws of this state or another wrongful act may
9 not be held civilly liable for hiring that individual in a claim brought for negligent



1 hiring if, in lieu of conducting its own investigation, the employing broker relied on
2 the investigations conducted by the department under s. 440.03 (13) or on any
3 determination made by the board, including a determination under s. 452.07 (2) or
4 452.25. ✓

(end ins 5-21)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3247/2dn

MED: A:...

JLd

Date

Please review the language included carefully and let me know if you have any questions or would like any changes.

Also note that, according to the case *Miller v. Wal-Mart Stores, Inc.*, 219 Wis.2d 250, 580 N.W.2d 233 (1998), it is only necessary to prove, in an action for negligent hiring, that the employee committed a "wrongful act." Such a wrongful act need not be a crime, or even a tort. I therefore provided that the immunity would apply if the employee committed a crime under the laws of this state or another wrongful act. Is that OK?

*

*

Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
E-mail: michael.duchek@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3247/2dn
MED:jld:rs

December 9, 2013

Please review the language included carefully and let me know if you have any questions or would like any changes.

Also note that, according to the case *Miller v. Wal-Mart Stores, Inc.*, 219 Wis. 2d 250, 580 N.W.2d 233 (1998), it is only necessary to prove, in an action for negligent hiring, that the employee committed a "wrongful act." Such a wrongful act need not be a crime, or even a tort. I therefore provided that the immunity would apply if the employee committed a crime under the laws of this state *or another wrongful act*. Is that OK?

Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
E-mail: michael.duchek@legis.wisconsin.gov

Duchek, Michael

From: Rossetto, Matt
Sent: Thursday, December 12, 2013 9:49 AM
To: Duchek, Michael
Subject: RE: 3247/2

*Call from
Matt 12/17/13 -
Make first change. Can
leave second alone a
SPS*

First change looks good, should address their concern just fine. I'm not even going to mess with the second right now.

From: Duchek, Michael
Sent: Wednesday, December 11, 2013 3:05 PM
To: Rossetto, Matt
Subject: RE: 3247/2

My thoughts –

With regards to the first one – instead of saying, “in lieu of conducting its own investigation” how about saying “regardless of whether the employing broker conducted its own investigation” or “regardless of any investigation conducted by the employing broker.” I think it makes it clearer to specify either way instead of just taking that phrase out because then a court will know whether the immunity applies if the employing broker did some investigation on their own. I guess my thought was that, if you just take that phrase out, then you might have a question of, if the employing broker *did* conduct its own check, whether the employer was really relying on the fact that they got a license.

As for the second – one concern might be, what if someone has a license and gets convicted of a crime but somehow keeps their license because DSPS/REEB don't find out. I'm not sure how often DSPS does background checks once someone has a license (I seem to recall that they actually don't do them each time for renewals), but if you simply say they get to rely on the fact that the person has a license, it seems to me they're relying on DSPS and the REEB to keep tabs on everyone. But if DSPS and the REEB *aren't* doing regular background checks to check up on people, should they still be able to rely on the fact that the person has a license as evidence of good character? I guess my question would be how confident DSPS and the Boards are that they get informed about new convictions after licensure and I assume that depends whether they do background checks or not and whether people self-disclose their convictions like they're supposed to or if DSPS/REEB somehow will get informed some other way. Another question might be what if the person loses their license (due to a conviction, for instance), but doesn't tell their employer. Could that happen? If so, should the immunity apply in that instance?

Does that help? Let me know or call if I'm not making sense. In short, though, both of these seem like policy questions.

-Mike

From: Rossetto, Matt
Sent: Wednesday, December 11, 2013 11:35 AM
To: Duchek, Michael
Subject: 3247/2

Hi Mike-

Couple of questions on the WRA's concerns. I'm honestly not inclined to make either of these changes, particularly the 2nd. I think we need the statute references in there—they want a blanket protection and while I understand that it's a CYA for their members I'm more comfortable keeping those references to the background checks/investigations in the bill.

As far as their first concern... I don't think it's a big deal, nor do I think someone could sue on the idea that a broker should have conducted their own investigation if that language is left in. Isn't that the entire point of the provision?

Let me know your thoughts.

Thanks,

Matt

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

From: Cori M. Lamont [<mailto:CoriL@wra.org>]
Sent: Wednesday, December 11, 2013 11:17 AM
To: Rossetto, Matt
Cc: tlarson@wra.org
Subject: Re: New felons draft

Hi Matt,

Just a couple of comments relating to the new section 11 on page 6.

Our intent is to say if the person receives a license then the broker should be allowed to rely on the fact that Board issued that license.

- 1) line 18, "in lieu of conducting its own investigation". I would suggest removing this statement. I am concerned this is suggesting brokers may be conducting their own research. While I indicated this does often happen, I would hate to create some sort of suggestion that the broker should be doing one.
- 2) I would suggest removing the specific references to the various areas of the statutes AT&T the end of that section. While I get the goal, it should just say if the state issues the license then this section protects the broker.

Please let me know if you have any questions. I will be out of the office today and Thursday at a conference, so my cell 262.309.2724 or my email is the best to reach me.

Thank you,

Cori

Cori M. Lamont

Director of Regulatory Affairs
Wisconsin REALTORS[®] Association
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Madison, WI 53704
tel: 608-241-2047 | fax: 608-241-5168 | www.wra.org

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On Dec 9, 2013, at 1:38 PM, "Rossetto, Matt" <Matt.Rossetto@legis.wisconsin.gov> wrote:

Attached

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

<13-3247_2.pdf>

<13-3247_2dn.pdf>

Duchek, Michael

From: Rossetto, Matt
Sent: Thursday, December 19, 2013 4:11 PM
To: Duchek, Michael
Subject: RE: Initial app.

Hi Mike-

Thanks for checking on that but we'll leave it as is.

Matt

From: Duchek, Michael
Sent: Thursday, December 19, 2013 2:09 PM
To: Rossetto, Matt
Subject: Initial app.

Matt,

I was going to get the bill out to you and had one final thought – we may want to include an initial applicability provision with regards to the immunity provision. These basically tell courts what the law first applies to so they know whether a situation is covered by the old law or the new law in the case of a dispute. So in this case, I would say it first applies to someone hired on the bill's effective date, meaning that if an employer hired someone before the bill took effect, they couldn't claim this immunity provision. Is that OK?

-Mike