2013 DRAFTING REQUEST

Assembly Amendment (AA-AB688)

Received:	**2/6/2014**	Received By:	**mduchek**
Wanted:	**As time permits**	Same as LRB:	**a1683**
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:

Instead of 5 year disqualifier following completion of sentence, do 3 year following release from prison

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Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mduchek 2/7/2014	kfollett 2/7/2014	jfrantze 2/10/2014	_____ _____			
/1				_____ _____	mbarman 2/10/2014	mbarman 2/10/2014	

FE Sent For:

<END>

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/?	mduchek	1/15 f 2/7		2/10			

FE Sent For:

<END>

Duchek, Michael

From: Rossetto, Matt
Sent: Thursday, February 06, 2014 12:12 PM
To: Duchek, Michael
Cc: Henkel, Matt
Subject: Amendment to AB 688/SB 531

Hi Mike-

We'd like an amendment drafted to reflect the following changes:

Instead of the eligibility period for a license being 5 years after release and completion of extended supervision, we'd like the period to be 3 years after the date of release from incarceration. Please remove all references to extended supervision (parole, probation etc).

Let me know if you have questions.

Matt

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

State of Wisconsin
2013 - 2014 LEGISLATURE

LRB-3915/1
MED:jld&wlj:rs

2013 ASSEMBLY BILL 688

January 30, 2014 - Introduced by Representatives KNUDSON, MURTHA, BROOKS, JACQUE, KAHL, KRUG, A. OTT and BERNIER, cosponsored by Senators FARROW and SCHULTZ. Referred to Committee on Housing and Real Estate.

1 AN ACT ***to renumber and amend*** 452.15; ***to amend*** 452.01 (4), 452.025 (5) (b),
2 452.12 (3) and 452.14 (3) (intro.); and ***to create*** 440.03 (13) (bm), 452.01 (3p),
3 452.01 (4v), 452.05 (1) (h), 452.05 (1) (i), 452.07 (2), 452.12 (5) (d), 452.139 (3),
4 452.14 (2m), 452.14 (3) (o), 452.14 (3m), 452.14 (4r), 452.15 (2) and 452.25 of the
5 statutes; **relating to:** eligibility for a broker's or salesperson's license or a
6 time-share salesperson's certificate of registration following a criminal
7 conviction, immunity for employing real estate brokers in certain actions,
8 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 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 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.

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

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

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

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

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

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

1. Reviewing any information relating to the felony.

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

3. Considering all of the following factors:

a. The severity and nature of the felony.

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

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

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

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

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

(END)

State of Wisconsin
2013 – 2014 LEGISLATURE

In 2-7-13
Mon.

LRBa1658/1
CMH&MED:...

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY BILL 688

At the locations indicated, amend the bill as follows:

1. Page 8, line 12: delete the material beginning with "his" and ending with "was completed," on line 14 and substitute "the confinement portion of his or her sentence, if the applicant is serving a bifurcated sentence, or has been released from prison to parole or released upon the completion of his or her sentence; and 3 years have elapsed since the date on which the confinement portion was completed or the applicant was released,".

(END)