



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 278
[2017 Assembly Bill 829]

**Criminal History as a Bar to
Professional Licensure**

Subject to certain exceptions, it is generally an unlawful act of employment discrimination for a state or local agency that has the authority to grant or deny professional or occupational licenses to refuse to license an individual on the basis of the individual's arrest or conviction record. 2017 Wisconsin Act 278 makes various changes to the circumstances under which a licensing agency may base its decisions on an individual's criminal history.

PRIOR LAW

Under prior law, it was not unlawful for an agency to deny a license to an individual who was subject to a pending criminal charge if the circumstances of the charge substantially related to the circumstances of the particular licensed activity. It was also not unlawful employment discrimination to deny a license to an individual who had been convicted of any felony, misdemeanor, or other offense the circumstances of which substantially related to the circumstances of the particular licensed activity.

THE ACT

The Act retains the standard described above, except as follows. First, in addition to requiring that the circumstances of an arrest or conviction substantially relate to the circumstances of the licensed activity, the Act also prohibits a licensing agency from:

- Refusing to license an individual, or suspending an existing license, based on a substantially related pending criminal charge, unless the charge is for one of certain specified crimes against a child or life and bodily security, or a violent crime against a child.
- Refusing to license an individual, or barring or terminating an individual from licensing because the individual was adjudicated delinquent of an offense under the

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

Juvenile Justice Code, unless the offense was one of certain specified crimes against a child or life and bodily security.

Second, except in the case of certain exempt offenses, the Act requires a licensing agency that denies or terminates a license based on a prior conviction to state in writing its reasons for doing so and allow the individual to show evidence of rehabilitation and fitness to engage in the licensed activity. The licensing agency must consider a list of factors, such as the seriousness of the crime and relevant mitigating circumstances. In addition, either of the following must be accepted as competent evidence of sufficient rehabilitation and fitness: (1) documentation showing that the person was honorably discharged or separated under honorable conditions from the military and had no subsequent criminal convictions; or (2) documentation showing that the person completed his or her probation, extended release or parole and, if the person served time in a correctional institute, that one year has passed since his or her release without subsequent conviction of a crime.

Third, the Act allows an individual to obtain a predetermination from a state licensing agency regarding whether he or she would be disqualified from obtaining a license due to a prior conviction before submitting a full license application. Each state licensing agency must also publish a document on its website indicating the offenses or kinds of offenses that may cause the agency to refuse or bar a person from licensure or terminate an existing license.

Finally, the Act grants state licensing agencies authority to promulgate emergency rules necessary to implement the Act.

Effective date: The Act generally takes effect on August 1, 2018.

Prepared by: Andrea Brauer, Staff Attorney

AB:mcm;jal

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