



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 15-051

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

The board should include a citation to s. 452.07 (1), Stats., to support its authority to promulgate rules defining the professional conduct and unethical practice of real estate.

2. Form, Style and Placement in Administrative Code

a. In the analysis of the proposed rule, the board should make it clear that the text included in the explanation of agency authority is quoted statutory language. This could be accomplished by inserting citations to the appropriate statutes.

b. In the statutes interpreted and statutory authority sections of the analysis, the notation “; Stats.” should be added after each statutory citation. [s. 1.07 (2) (Table), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. A comma should be inserted between “REEB 24.17 (2m)” and “relating” in the introductory clause.

b. The board should replace “for” with “of” following “revocation” in the first sentence of the plain language analysis so that it reads “a basis for revocation of a license”.

c. The board should insert “or” between “license,” and “may” in the description of Illinois law.

d. In SECTION 2 of the proposed rule, “administrative register” should be capitalized because the reference is to a proper name. [s. 1.01 (4), Manual.]

e. The board may consider expanding its plain language analysis, for the sake of the public’s understanding, to explain why the board needs specific statutory authorization to revoke a license or registration on the basis of a felony conviction. The purpose of the plain language analysis is to provide an understandable description of the effect of the rule, which, in this case, is to expand the scope of criminal activity for which the board may discipline a licensee. [s. 1.02 (2) (b), Manual.]

The board has the authority under s. 15.08 (5) (b), Stats., to “define and enforce professional conduct and unethical practices” for the profession. However, under Wisconsin law, a person generally may not face employment consequences on the basis of an arrest or conviction record unless the circumstances of the crime are substantially related to the circumstances of the particular job or licensed activity. [s. 111.335, Stats.] Under its authority and within the statutory employment discrimination parameters, the board previously promulgated s. REEB 24.17 (1) and (2), stating that licensees may be subject to discipline for any violation of the law or criminal conviction as long as the circumstances of the violation or conviction are substantially related to real estate practice. The board did not, however, possess the authority to promulgate a rule allowing the discipline of licensees on the basis of a crime if the circumstances of the crime were not substantially related to real estate practice.

2013 Wisconsin Act 288 (Act 288) specifically created an exception to the general employment discrimination statute by prohibiting the board from issuing a license to a person who has been convicted of a felony. [s. 452.25, Stats.] Act 288 also specifically gave the board the authority to revoke, suspend or limit a person’s real estate license if the person is convicted of a felony that would bar licensure. [s. 452.14 (3) (p), Stats.] Therefore, under Act 288, the board may revoke a license on the basis of a felony conviction, whether or not the crime is substantially related to real estate practice, without violating Wisconsin’s employment discrimination law.