



1995 SENATE BILL 178

May 3, 1995 - Introduced by Senators LEEAN, ELLIS and RUDE, by request of Governor Tommy G. Thompson. Referred to Committee on Business, Economic Development and Urban Affairs.

1 **AN ACT to create** 440.12 and 440.205 of the statutes; **relating to:** the issuance
2 of administrative warnings to holders of credentials issued by the department
3 of regulation and licensing, permitting the department of regulation and
4 licensing boards and examining boards or affiliated credentialing boards
5 within the department to require credential holders to conduct self-inspection
6 and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, the barbering and cosmetology examining board is required to appoint inspectors to inspect barber or cosmetologist, aesthetician, electrologist and manicurist establishments, and the department of regulation and licensing (DORL) is required to appoint inspectors to inspect barbering or cosmetology, aesthetics, electrology and manicuring schools and specialty schools. In addition, the funeral directors examining board requires an inspection of a funeral establishment before the examining board will issue a permit to the funeral establishment, and the pharmacy examining board may issue a license to operate a pharmacy at a specific location if the pharmacy is inspected and found to meet the requirements of the statutes. Finally, DORL and each board, examining board or affiliated credentialing board in DORL imposes various requirements on the practice of the professions that DORL or the board, examining board or affiliated credentialing board regulates, and DORL or the board, examining board or affiliated credentialing board may conduct inspections, including records inspections, to verify that a regulated professional complies with the practice requirements.

This bill allows DORL or any board, examining board or affiliated credentialing board in DORL that has the authority to establish standards of conduct for a profession to promulgate rules that, in addition or as an alternative to DORL or the

board, examining board or affiliated credentialing board appointing inspectors or conducting an inspection, require a regulated professional to inspect his or her own licensed location and to submit a report to DORL or the board, examining board or affiliated credentialing board that regulates the profession. The bill also allows DORL or a board, examining board or affiliated credentialing board to require a regulated professional to review specific practice requirements that relate to his or her profession and to verify in a report that his or her practice complies with those requirements.

Also, under current law, with exceptions, DORL and the boards, examining boards or affiliated credentialing boards in DORL may impose discipline on the holder of a credential issued by DORL by revoking, suspending or imposing limits on the credential or by reprimanding the holder of the credential or, in some cases, by imposing forfeitures.

This bill allows DORL or a board, examining board or affiliated credentialing board in DORL, as appropriate, to close a disciplinary investigation by issuing an administrative warning to the holder of the credential if DORL or the board, examining board or affiliated credentialing board determines that there is substantial evidence of misconduct by the holder of the credential but determines that a disciplinary proceeding should not be commenced.

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.** 440.12 of the statutes is created to read:

2 **440.12 Self-inspection programs.** (1) In this section, “self-inspection
3 program” means any of the following:

4 (a) A procedure requiring a person who has management or control authority
5 over a credentialed location, or over a location for which an application for a
6 credential is pending, to review conditions of the location for compliance with legal
7 requirements, and to verify in a report to the credentialing authority that the
8 location is in compliance with those requirements.

9 (b) A procedure requiring a person who is credentialed, or who is an applicant
10 for a credential, to review specific requirements for professional practice and to

1 verify in a report to the credentialing authority that his or her practice is in
2 compliance with those requirements.

3 (2) The department, or any examining board, affiliated credentialing board or
4 board in the department that has the authority to establish standards of conduct for
5 a profession, may promulgate rules establishing a self-inspection program. The
6 department, examining board, affiliated credentialing board or board may establish
7 a self-inspection program in addition to other inspection programs required by law
8 or as an alternative to other inspection programs required by law.

9 **SECTION 2.** 440.205 of the statutes is created to read:

10 **440.205 Administrative warnings.** If, after the department or a board,
11 examining board or affiliated credentialing board in the department determines that
12 there is substantial evidence of misconduct by the holder of a credential, but
13 determines that a disciplinary proceeding should not be commenced against the
14 holder of the credential, then the department, board, examining board or affiliated
15 credentialing board may close the investigation by the issuance of an administrative
16 warning. If an administrative warning is issued, the holder of the credential may
17 obtain a review of the administrative warning through a personal appearance before
18 the department, board, examining board or affiliated credentialing board that issued
19 the administrative warning. Administrative warnings shall be private and
20 confidential, do not constitute an adjudication of guilt or the imposition of discipline
21 and may not be used as evidence that the holder of the credential is guilty of the
22 alleged misconduct. However, if a subsequent allegation of misconduct by the holder
23 of the credential is received by the department or a board, examining board or
24 affiliated credentialing board in the department, the matter relating to the issuance
25 of the administrative warning may be reopened and disciplinary proceedings may be

1 commenced on the matter, or the administrative warning may be used in any
2 subsequent disciplinary proceeding as evidence that the holder of the credential had
3 actual knowledge that certain practices were contrary to law. The department shall
4 promulgate rules establishing uniform procedures for the issuance and use of
5 administrative warnings. The rules shall include a definition of “substantial
6 evidence of misconduct” for purposes of this section.

7 **(END)**