



2023 ASSEMBLY BILL 90

March 8, 2023 - Introduced by Representatives GUSTAFSON, SORTWELL, MACCO, ALLEN, BEHNKE, BINSFELD, BODDEN, DITTRICH, GREEN, GUNDRUM, KITCHENS, KRUG, MURSAU, O'CONNOR, RETTINGER, RODRIGUEZ, SCHMIDT, SCHRAA, SCHUTT, STEFFEN, TUSLER and WICHGERS, cosponsored by Senators STAFSHOLT, TESTIN, CABRAL-GUEVARA, FEYEN and WANGGAARD. Referred to Committee on Regulatory Licensing Reform.

1 **AN ACT** *to amend* 440.03 (13) (b) (intro.), 448.962 (1) (c) (intro.), 448.962 (2) (c)
2 (intro.), 448.963 (1) (b), 448.963 (2) (intro.), 448.963 (3) (intro.) and 448.963 (4)
3 (intro.); and *to create* 448.963 (3m), 448.963 (4m) and 448.9635 of the statutes;
4 **relating to:** third-party processing of applications for occupational therapists
5 and occupational therapy assistants and granting rulemaking authority.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Safety and Professional Services to contract with a third-party entity to receive applications for licensure as an occupational therapist or occupational therapy assistant, to collect and retain application fees, to determine whether an applicant has an arrest or conviction record, and to determine whether the applicant has met all other requirements for licensure. If the third-party entity determines that an applicant meets all of the requirements for licensure, the bill requires the third-party entity to inform the Occupational Therapy Affiliated Credentialing Board of its determination within 10 days from the day that the determination is made. The bill then requires the Occupational Therapy Affiliated Credentialing Board to promptly issue a license as an occupational therapist or an occupational therapy assistant to any applicant that the third-party entity determined was eligible under the bill. The bill provides a similar third-party process for applicants for licensure for a limited period to practice occupational therapy in association with an occupational therapist or for licensure for a limited period to assist in the practice of occupational therapy under the supervision of an occupational therapist.

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This bill allows any third-party entity contracted under the bill to set and periodically update the required fee for applications for licensure described under the bill. At least 60 days before any fee change goes into effect, the bill requires the third-party entity to submit a request to change the fee to the Joint Committee on Finance along with the third-party entity's current operating budget and an estimation of the change in total fees to be received by the third-party entity if the fee change were to go into effect. The bill allows the Joint Committee on Finance to hold a hearing on any requested fee change. If the Joint Committee on Finance holds a hearing on a requested fee change, the bill requires the third-party entity to adopt any fee determined by the joint committee. Further, if the Joint Committee on Finance determines at any time that the third-party entity has a budget surplus that is greater than 10 percent of the amount of fees that the third-party entity receives in a year, the joint committee may order the third-party entity to lower the fee to a fee determined by the joint committee.

Before entering into a contract with a third-party entity, the bill requires that any proposed contract be submitted to the Joint Committee on Finance for approval. Once a contract is approved, the bill requires the third-party entity to annually submit a report to the legislature detailing the performance of the third-party entity. The bill permits DSPS or any person delegated by the legislature to inspect and examine all records relating to the operations of the third-party entity.

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) (b) (intro.) of the statutes is amended to read:

2 440.03 (13) (b) (intro.) The department may investigate whether an applicant
3 for or holder of any of the following credentials has been charged with or convicted
4 of a crime only pursuant to rules promulgated by the department under this
5 paragraph, including rules that establish the criteria that the department will use
6 to determine whether an investigation under this paragraph is necessary, except as
7 provided in par. (c) and ss. 441.51 (5) (a) 5., 448.9635 (2) (a) 3., 448.980 (5) (b) 3.,
8 448.985 (3) (a) 4., 448.987 (3) (a) 5. a. and (5) (b) 2. a., and 455.50 (3) (e) 4. and (f) 4.:

9 **SECTION 2.** 448.962 (1) (c) (intro.) of the statutes is amended to read:

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1 448.962 (1) (c) (intro.) Any person performing occupational therapy services in
2 this state under a ~~limited permit~~ license issued for a limited period of time, as
3 provided under s. 448.963 (4), if at least one of the following applies:

4 **SECTION 3.** 448.962 (2) (c) (intro.) of the statutes is amended to read:

5 448.962 (2) (c) (intro.) Any person performing occupational therapy services in
6 this state under a ~~limited permit~~ license issued for a limited period of time, as
7 provided under s. 448.963 (4), if at least one of the following applies:

8 **SECTION 4.** 448.963 (1) (b) of the statutes is amended to read:

9 448.963 (1) (b) Pay the fee specified in s. 440.05 (1) or, if the department
10 contracts with a 3rd-party entity under s. 448.9635, the fee established by the
11 3rd-party entity under s. 448.9635 (3).

12 **SECTION 5.** 448.963 (2) (intro.) of the statutes is amended to read:

13 448.963 (2) (intro.) The Subject to sub. (3m), the affiliated credentialing board
14 shall grant a license as an occupational therapist to a person who does all of the
15 following:

16 **SECTION 6.** 448.963 (3) (intro.) of the statutes is amended to read:

17 448.963 (3) (intro.) The Subject to sub. (3m), the affiliated credentialing board
18 shall grant a license as an occupational therapy assistant to a person who does all
19 of the following:

20 **SECTION 7.** 448.963 (3m) of the statutes is created to read:

21 448.963 (3m) If the department contracts with a 3rd-party entity under s.
22 448.9635, the affiliated credentialing board shall promptly issue a license as an
23 occupational therapist under sub. (2) or a license as an occupational therapy
24 assistant under sub. (3) to an applicant that the 3rd-party entity determines is
25 eligible.

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1 **SECTION 8.** 448.963 (4) (intro.) of the statutes is amended to read:

2 448.963 (4) (intro.) The Subject to sub. (4m), the affiliated credentialing board
3 may, upon application, issue a ~~permit~~ license for a limited period of time designated
4 by the affiliated credentialing board to any of the following:

5 **SECTION 9.** 448.963 (4m) of the statutes is created to read:

6 448.963 (4m) If the department contracts with a 3rd-party entity under s.
7 448.9635, the affiliated credentialing board may issue a license to practice
8 occupational therapy in association with an occupational therapist under sub. (4) (a)
9 or a license to assist in the practice of occupational therapy under the supervision of
10 an occupational therapist under sub. (4) (b) to an applicant that the 3rd-party entity
11 determines is eligible.

12 **SECTION 10.** 448.9635 of the statutes is created to read:

13 **448.9635 Third-party application processing.** (1) (a) The department
14 shall contract with a 3rd-party entity to perform the functions described under this
15 section.

16 (b) Before executing or renewing a contract under this subsection, the
17 department shall submit the proposed contract to the joint committee on finance for
18 approval. If the cochairpersons of the joint committee on finance do not notify the
19 department within 14 working days after the date the contract is submitted under
20 this subsection that the committee has scheduled a meeting for the purpose of
21 reviewing the contract, the department shall execute or renew the contract. If,
22 within 14 working days after the date the contract is submitted under this
23 subsection, the cochairpersons of the joint committee on finance notify the
24 department that the committee has scheduled a meeting for the purpose of reviewing

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1 the contract, the department shall incorporate into the contract all changes made by
2 the committee.

3 (c) No contract under this subsection is valid or enforceable unless the contract
4 was submitted to and approved by the joint committee on finance under par. (b) in
5 its entirety.

6 (d) No contract under this subsection may be for a term greater than 4 years.

7 (2) If the department contracts with a 3rd-party entity under sub. (1), all of
8 the following apply:

9 (a) The 3rd-party entity shall do all of the following for any applicant for
10 licensure under s. 448.963 (2) or (3):

11 1. Receive the application for licensure required under s. 448.963 (1) (a).

12 2. Collect and retain the fee established by the 3rd-party entity under sub. (3).

13 3. Determine, subject to ss. 111.321, 111.322, and 111.335, whether the
14 applicant has been convicted of an offense the circumstances of which substantially
15 relate to the practice of occupational therapy or the practice as an occupational
16 therapy assistant, whichever is applicable.

17 4. If the applicant is applying for licensure as an occupational therapist,
18 determine whether the applicant has met the requirements under s. 448.963 (2) or,
19 if the applicant is applying for licensure as an occupational therapy assistant,
20 determine whether the applicant has met the requirements under s. 448.963 (3).

21 (b) The 3rd-party entity shall do all of the following for any applicant for a
22 license under s. 448.963 (4):

23 1. If the applicant is applying for a license to practice occupational therapy in
24 association with an occupational therapist under s. 448.963 (4) (a), determine
25 whether the applicant has met the requirements under s. 448.963 (2) (b) 1. or 2.

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1 2. If the applicant is applying for a license to assist in the practice of
2 occupational therapy under the supervision of an occupational therapist under s.
3 448.963 (4) (b), determine whether the applicant has met the requirements under s.
4 448.963 (3) (b) 1. or 2.

5 (c) 1. The 3rd-party entity shall inform the affiliated credentialing board of all
6 applications received under par. (a), whether the applicant has paid the required fee,
7 whether the applicant has been convicted of an offense described under par. (a) 3.,
8 and the determination made by the 3rd-party entity under par. (a) 4. within 10 days
9 from the day that the decision is made. The 3rd-party entity shall also inform the
10 applicant of the determination made by the 3rd-party entity under par. (a) 4. within
11 10 days from the day that the decision is made.

12 2. The 3rd-party entity shall inform the affiliated credentialing board of all
13 applications received under par. (b) 1. or 2. and the determination made by the
14 3rd-party entity under par. (b) 1. or 2. within 10 days from the day that the decision
15 is made. The 3rd-party entity shall also inform the applicant of the determination
16 made by the 3rd-party entity under par. (b) 1. or 2. within 10 days from the day that
17 the decision is made.

18 **(3)** (a) If the department contracts with a 3rd-party entity under sub. (1), the
19 3rd-party entity shall establish and may periodically update the fee for applications
20 for licensure under this subchapter. At least 60 days before any fee change goes into
21 effect, the 3rd-party entity shall submit a request to establish the fee to the joint
22 committee on finance.

23 (b) Any request under par. (a) shall include a current operating budget for the
24 3rd-party entity and an estimation of the change in total fees to be received by the
25 3rd-party entity if the fee change were to go into effect.

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1 (c) If the cochairpersons of the joint committee on finance do not notify the
2 3rd-party entity within 14 working days after the date the request is submitted
3 under par. (a) that the committee has scheduled a meeting for the purpose of
4 reviewing the fee, the 3rd-party entity may adopt the fee. If, within 14 working days
5 after the date the request is submitted under par. (a), the cochairpersons of the joint
6 committee on finance notify the 3rd-party entity that the committee has scheduled
7 a meeting for the purpose of reviewing the fee, the 3rd-party entity shall adopt the
8 fee determined by the committee.

9 (d) If the joint committee on finance determines at any time that the 3rd-party
10 entity has a budget surplus that is greater than 10 percent of the amount of fees that
11 the 3rd-party entity receives in a year, the joint committee on finance may order the
12 3rd-party entity to lower the fee under par. (a) to a fee determined by the joint
13 committee.

14 (e) Whenever there is a change in the fee charged by the 3rd-party entity under
15 this subsection, the joint committee on finance shall submit the updated fee to the
16 legislative reference bureau for publication in the Wisconsin administrative register.

17 **(4)** If the department contracts with a 3rd-party entity under sub. (1), the
18 3rd-party entity shall, no later than April 15 of each year, submit a financial report
19 to the joint committee on finance and to the chief clerk of each house of the legislature
20 for distribution under s. 13.172 (2). The report shall contain all of the following for
21 the previous calendar year:

22 (a) The number of applications received by the 3rd-party entity.

23 (b) The amount of fees collected by the 3rd-party entity.

24 (c) The number of applications for which the 3rd-party entity determined the
25 applicant was eligible for licensure.

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1 (d) The median number of days from the day that an application is received by
2 the 3rd-party entity to the day that a final determination on the application is made.
3 The 3rd-party entity shall separately calculate the median number of days for
4 applications for licensure as an occupational therapist, for applications for licensure
5 as an occupational therapy assistant, and for applications for licensure under s.
6 448.963 (4).

7 (e) The amount of expenses incurred by the 3rd-party entity. The 3rd-party
8 entity shall separately report all expenses incurred relating to staff, including
9 payroll and employee benefits.

10 (f) A statement of the 3rd-party entity's assets, liabilities, and equity as of the
11 end of the preceding calendar year.

12 **(5)** If the department contracts with a 3rd-party entity under sub. (1), the
13 department or the legislature or any person delegated by the legislature may inspect
14 and examine or cause an inspection and examination of all records relating to the
15 operations of the 3rd-party entity.

16 **(6)** The department, in consultation with the affiliated credentialing board,
17 may promulgate any rules necessary to implement this section.

18

(END)