

### 2003 DRAFTING REQUEST

#### Assembly Substitute Amendment (ASA-SB103)

Received: **02/02/2004**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Stephen Nass (608) 266-5715**

By/Representing: **Bob Conlin**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Occupational Reg. - misc**

Extra Copies: **PJH**

Submit via email: **YES**

Requester's email: **Rep.Nass@legis.state.wi.us**

Carbon copy (CC:) to: **robert.conlin@legis.state.wi.us**

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#### Pre Topic:

No specific pre topic given

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#### Topic:

DRL rules for investigations

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#### Instructions:

See Attached

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#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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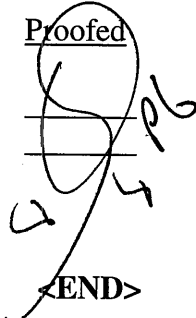
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/?	mkunkel	1-2/3 KMG					

FE Sent For:

<END>

O. note

ASA to

2003 SENATE BILL 103

50330/1

2/4  
10am

April 9, 2003 - Introduced by Senators COWLES, STEPP and HANSEN, cosponsored by Representatives KRAWCZYK, WEBER, VAN ROY, MCCORMICK, HAHN, HINES, OWENS and VRAKAS. Referred to Committee on Labor, Small Business Development and Consumer Affairs.

1 AN ACT *to renumber and amend* 440.03 (13); and *to create* 440.03 (13) (b) and  
2 440.03 (13) (c) of the statutes; **relating to:** criminal background investigations  
3 by the Department of Regulation and Licensing of applicants for certain  
4 professional credentials. *and granting rule-making authority*

**Analysis by the Legislative Reference Bureau**

Under current law, the Department of Regulation and Licensing (DRL) investigates applicants for certain professional credentials issued by DRL and boards in DRL to determine whether the applicants satisfy the eligibility requirements for the credentials. For some credentials, an applicant is ineligible for the credential if he or she has an arrest or conviction record the circumstances of which substantially relate to the professional activity for which the credential is issued. Also, for some credentials, DRL or a board in DRL may take disciplinary action against a credential holder who has such an arrest or conviction. Current law allows DRL to require an applicant for a credential to provide any information that is necessary for investigating an applicant's eligibility.

This bill specifies that, if DRL receives credible evidence that an applicant for, or holder of, a credential has been charged with or convicted of a crime, DRL is allowed to investigate the charge or conviction. If DRL conducts such an investigation, DRL must require the applicant or credential holder to be photographed and fingerprinted.

Under the bill, DRL must require an applicant or credential holder for the following types of credentials to be photographed and fingerprinted, even if DRL has

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not received credible evidence regarding convictions or crimes: 1) private detectives; and 2) private security persons. (Under current law, an applicant for those credentials is ineligible if he or she has been convicted of an unpardoned felony, even if the circumstances do not substantially relate to private detective or security activities.)

The bill allows the state Department of Justice to submit fingerprints obtained by DRL under the bill to the Federal Bureau of Investigation for the purpose of verifying the identity of the applicant or credential holder and obtaining his or her records of criminal arrests and convictions.

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) of the statutes is renumbered 440.03 (13) (a) and  
2 amended to read:

3 440.03 (13) (a) The department may conduct an investigation to determine  
4 whether an applicant for a credential issued under chs. 440 to 480 satisfies any of  
5 the eligibility requirements specified for the credential, including whether the  
6 applicant does not have an arrest or conviction record. In conducting an  
7 investigation under this subsection paragraph, the department may require an  
8 applicant to provide any information that is necessary for the investigation <sup>✓</sup> or, for the

9 ~~purpose of obtaining information related to~~ an arrest or conviction record of an  
10 ~~applicant, to complete forms provided by the department of justice or the federal~~  
11 ~~bureau of investigation.~~ <sup>the department shall comply with the</sup>

12 (d) The department shall charge the an applicant any <sup>requirements of pars.</sup> fees, costs, or other  
13 expenses incurred in conducting the any investigation under this subsection or s.  
14 440.26. <sup>(b)</sup>  
<sup>and</sup>  
<sup>(c)</sup>

15 SECTION 2. 440.03 (13) (b) of the statutes is created to read:

except that, for an investigation  
of

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440.03 (13) (b) ~~Upon the receipt of credible evidence that an applicant for or holder of any of the following credentials has been charged with or convicted of a crime, the department may investigate the charge or conviction.~~

1. Accountant, certified public.
2. Acupuncturist.
3. Advanced practice nurse prescriber.
4. Aesthetician.
5. Aesthetics instructor.
6. Appraiser, real estate, certified general.
7. Appraiser, real estate, certified residential.
8. Appraiser, real estate, licensed.
9. Architect.
10. Athletic trainer.
11. Auctioneer.
12. Audiologist.
13. Barber or cosmetologist.
14. Barbering or cosmetology instructor.
15. Barbering or cosmetology manager.
16. Boxer.
17. Cemetery preneed seller.
18. Cemetery salesperson.
19. Chiropractor.
20. Dental hygienist.
21. Dentist.
22. Designer of engineering systems.

The department may investigate whether

only pursuant to rules promulgated by the department under this paragraph, except as provided in par. (c):

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- 1           23. Dietitian.
- 2           24. Drug distributor.
- 3           25. Drug manufacturer.
- 4           26. Electrologist.
- 5           27. Electrology instructor.
- 6           28. Engineer, professional.
- 7           29. Fund-raising counsel.
- 8           30. Funeral director.
- 9           31. Hearing instrument specialist.
- 10          32. Home inspector.
- 11          33. Landscape architect.
- 12          34. Land surveyor.
- 13          35. Manicuring instructor.
- 14          36. Manicurist.
- 15          37. Marriage and family therapist.
- 16          38. Massage therapist or bodyworker.
- 17          39. Music, art, or dance therapist.
- 18          40. Nurse, licensed practical.
- 19          41. Nurse, registered.
- 20          42. Nurse-midwife.
- 21          43. Nursing home administrator.
- 22          44. Occupational therapist.
- 23          45. Occupational therapy assistant.
- 24          46. Optometrist.
- 25          47. Perfusionist.

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- 1           48. Pharmacist.
- 2           49. Physical therapist.
- 3           50. Physical therapist assistant.
- 4           51. Physician.
- 5           52. Physician assistant.
- 6           53. Podiatrist.
- 7           54. Private detective.
- 8           55. Private practice school psychologist.
- 9           56. Private security person.
- 10          57. Professional counselor.
- 11          58. Professional fund-raiser.
- 12          59. Professional geologist.
- 13          60. Professional hydrologist.
- 14          61. Professional soil scientist.
- 15          62. Psychologist.
- 16          63. Real estate broker.
- 17          64. Real estate salesperson.
- 18          65. Registered interior designer.
- 19          66. Respiratory care practitioner.
- 20          67. Social worker.
- 21          68. Social worker, advanced practice.
- 22          69. Social worker, independent.
- 23          70. Social worker, independent clinical.
- 24          71. Speech-language pathologist.
- 25          72. Time-share salesperson.



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1           73. Veterinarian.

2           74. Veterinary technician.

3           75. Any other profession or occupation specified by law that is regulated by the  
4 department or a credentialing board.

5           **SECTION 3.** 440.03 (13) (c) of the statutes is created to read:

6           440.03 (13) (c) The department shall require an applicant for a private  
7 detective license or a private security permit under s. 440.26, and a person for whom  
8 the department conducts an investigation under par. (b), to be photographed and  
9 fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's  
10 fingerprints. The department of justice may submit the fingerprint cards to the  
11 federal bureau of investigation for the purpose of verifying the identity of the persons  
12 fingerprinted and obtaining records of their criminal arrests and convictions.

13

(END)

↑  
INSERT 6-12

~~(time lag 5~~

~~EMERGENCY rule)~~

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INSERT 6-12: ✓

**SECTION 1. Nonstatutory provisions.**

(1) The department of regulation and licensing may, using the procedure under section 227.24 of the statutes, promulgate the rules under section 440.03 (13) (b) of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

**SECTION 2. Effective date.**

(1) This act takes effect on the first day of the 4th month beginning after publication.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0330/1dn

MDK:.....

*King*

Rep. Nass:

Because the substitute amendment requires rules, I added a short delayed effective date (approximately 4 months) to give DRL time to promulgate rules. Also, I allowed DRL to promulgate emergency rules before permanent rules go into effect. Is that okay?

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.state.wi.us](mailto:mark.kunkel@legis.state.wi.us)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0330/1dn  
MDK:kmg:rs

February 4, 2004

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