

2011 DRAFTING REQUEST

Bill

Received: **09/22/2011**

Received By: **mgallagh**

Wanted: **As time permits**

Companion to LRB:

For: **Erik Severson (608) 267-2365**

By/Representing: **AJ Scholz**

May Contact:

Drafter: **mgallagh**

Subject: **Occupational Reg. - misc**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Severson@legis.wi.gov**

Carbon copy (CC:) to: **michael.gallagher@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Prevent DSPS from requiring fingerprints for licensure for private professions

Instructions:

See attached

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>
/?	mgallagh 10/20/2011	mduchek 11/11/2011		_____			
/1	mgallagh 11/16/2011	mduchek 12/02/2011	rschluet 11/11/2011	_____	ggodwin 11/11/2011		
/2	mgallagh 12/21/2011	mduchek 12/27/2011	phenry 12/05/2011	_____	sbasford 12/05/2011		
/3			jmurphy 01/03/2012	_____	sbasford 01/03/2012	ggodwin 01/30/2012	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

None

<END>

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/2	mgallagh 12/21/2011	mduchek 12/27/2011	phenry 12/05/2011	_____	sbasford 12/05/2011		
/3			jmurphy 01/03/2012	_____	sbasford 01/03/2012		

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/2			phenry 12/05/2011	_____	sbasford 12/05/2011		

FE Sent For:

12/27/11
13
Jim 12/29
Justin 1/3/12

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/1		 12/2/11	rschluet 11/11/2011	_____	ggodwin 11/11/2011		

FE Sent For:

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12

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/?	mgallagh			_____	_____		

FE Sent For:

<END>

Gallagher, Michael

From: Scholz, AJ
Sent: Wednesday, October 12, 2011 2:27 PM
To: Gallagher, Michael
Subject: RE: Occupational Regulation Legislation

Hey Mike

Since it is unrelated to licensure and is in that way a separate issue, we can leave it alone.

Thanks for the heads up though

AJ Scholz

Office of Representative Erik Severson
608-267-2365
312 North, State Capitol

From: Gallagher, Michael
Sent: Wednesday, October 12, 2011 2:24 PM
To: Scholz, AJ
Subject: RE: Occupational Regulation Legislation

AJ:

Current law provides that an applicant for a license as a wholesale distributor of prescription drugs must submit photographs and fingerprints of the person's employees. Do you want to eliminate this requirement in the draft or leave it alone? See. S. 450.071 (3).

Thanks.

Mike

Michael P. Gallagher
Legislative Attorney
Legislative Reference Bureau
(608) 267-7511
michael.gallagher@legis.wisconsin.gov

From: Scholz, AJ
Sent: Tuesday, September 20, 2011 2:33 PM
To: Gallagher, Michael
Subject: RE: Occupational Regulation Legislation

Hey Mike,

Attached is the rule.

<< File: Ch RL 4 CR 11- 027 (Background Check) 08-04-11 FINAL draft form.pdf >>

Thanks for your help

AJ Scholz

Office of Representative Erik Severson
608-267-2365
312 North, State Capitol

From: Gallagher, Michael
Sent: Tuesday, September 20, 2011 2:11 PM
To: Scholz, AJ
Subject: RE: Occupational Regulation Legislation

Thanks. Can you provide (or point me to) a copy of the proposed rule? I'll let you know if I have other questions.

Mike

Thanks.

Michael P. Gallagher
Legislative Attorney
Legislative Reference Bureau
(608) 267-7511
michael.gallagher@legis.wisconsin.gov

From: Scholz, AJ
Sent: Tuesday, September 20, 2011 1:53 PM
To: Gallagher, Michael
Subject: Occupational Regulation Legislation

Hello Michael,

Rep Severson would like to get a bill drafted that would prevent DSPS from requiring fingerprints as part of licensure for any profession that is not a public employee. This is in response to a DSPS rule that would require fingerprints for licensure of physicians.

The intent of the bill is to prevent DSPS from requiring finger prints for licensure of private sector workers.

Please feel free to contact me if you have any questions

AJ Scholz

Office of Representative Erik Severson
608-267-2365
312 North, State Capitol

Gallagher, Michael

From: Scholz, AJ
Sent: Tuesday, September 20, 2011 1:53 PM
To: Gallagher, Michael
Subject: Occupational Regulation Legislation

Hello Michael,

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AJ Scholz

Office of Representative Erik Severson

608-267-2365

312 North, State Capitol

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY
DEPARTMENT OF SAFETY AND : AND PROFESSIONAL SERVICES
PROFESSIONAL SERVICE : (CLEARINGHOUSE RULE 11-027)

PROPOSED ORDER

The Wisconsin Department of Safety and Professional Services (formerly the Department of Regulation and Licensing) proposes an order to renumber and amend s. RL 4.08 (intro), and to create RL 4.08 (2), relating to background checks and fingerprinting.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 440.03 (13) (a), (b) and (c), and 448.05 (1) (a), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 440.03 (1), 440.03(13) (d), 448.40 (1), Stats.

Explanation of agency authority:

Section 448.05, Stats., is enforced and administered by the Department of Safety and Professional Services (“DPS”) and the Medical Examining Board. Specifically, s. 448.40 (1), Stats., authorizes the Medical Examining Board to promulgate rules to carry out the purposes of the Medical Examining Board subchapter. Section 448.05 (1), Stats., is in the Medical Examining Board subchapter.

Further, the Medical Examining Board is obligated under s. 15.08 (5) (b), Stats., to promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

DPS is a department in state government, and is therefore an “agency” under s. 227.01 (1), Stats.. Under s. 227.11(2) (a), Stats., it may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute. Both ss. 440.03 (13) and 448.05 (1), Stats., are enforced and administered by DPS.

Last, DSPS is authorized under s. 440.03 (1), Stats., to promulgate rules defining uniform procedures to be used by the department, the attached boards, the examining boards, and the affiliated credentialing boards.

Related statute or rule:

Section 440.03 (7) Stats., and Wis. Admin. Code § RL 4.07 (52)

Plain language analysis:

Subject to ss. 111.321, 111.322 and 111.355, Stats., s. 448.05 (1) (a), Stats., requires that an applicant must not have an arrest or conviction record to be qualified for the granting of any license by the Medical Examining Board. Section 448.03 (13) (a), Stats., authorizes DSPS to conduct investigations to determine whether applicants have arrest or conviction records and require applicants to provide any information that is necessary for the investigations. Under s. 448.03 (13) (b), Stats., DSPS may investigate whether applicants for licenses to practice medicine and surgery have arrest or conviction records pursuant to rules it promulgates.

DSPS promulgated Wis. Admin. Code ss. RL 4.07 and RL 4.08 to interpret s. 448.03 (13), Stats.. Under ss. RL 4.07 and RL 4.08, DSPS may require an applicant for physician licensure to submit fingerprints and undergo a criminal background check if “there exists reason to believe that the applicant has failed to accurately describe his or her conviction record.”

Currently, applicants for physician licenses may be required to submit fingerprints and undergo criminal background checks if “there exists reason to believe that the applicant has failed to accurately describe his or her conviction record.” The proposed changes to Wis. Admin. Code s. RL 4.08 enable DSPS to require an applicant for a physician license to submit fingerprints and undergo a criminal background check as part of the licensure process when there is no reason to believe that an applicant has failed to accurately describe his or her conviction record. Therefore, DSPS may require any applicant for a physician license to submit fingerprints and undergo a criminal background check prior to DSPS issuing a license to him or her.

Requiring fingerprints and criminal background checks as part of the physician licensure process involves two changes to Wis. Admin. Code s. RL 4.08. First, the language added to SECTION 1 creates a class of licensed credentials the applicants for which may be required to be photographed, submit fingerprints, and undergo criminal background checks in situations when there is not a reason to believe that an applicant has failed to accurately describe his or her conviction record.

Second, SECTION 2 defines the physician license as a member of the class of licensed credentials created by the changes to SECTION 1. Together, the changes to SECTION 1 and SECTION 2 require all applicants for a physician license to practice medicine and surgery to submit a full set of fingerprints along with their application for licensure. The

fingerprints will be used to verify the applicant's identity and conduct searches for criminal arrests and convictions in accordance with s. 440.03 (13), Stats.

Summary of, and comparison with, existing or proposed federal legislation:

While there are numerous federal laws that empower the FBI to conduct criminal background checks and provide criminal history reports to state agencies for non-criminal purposes, two are most relevant in this case. They are: Public Law 92-544 (1972), 86 Stat. 1115, and the National Child Protection Act of 1993, 42 U.S.C. § 5119a, as amended by the Volunteers for Children Act, Public Law 105-251 (1998).

The most relevant federal law, and the basis of the proposed rule, is Public Law 92-544 (1972). Public Law 92-544 empowers the FBI to conduct criminal background checks and provide the resulting information to state agencies for non-criminal purposes, such as licensing. However, under Pub. L 92-544, the FBI will only conduct background checks and provide criminal history reports to state agencies for non-criminal purposes based on a federal law or state statute that explicitly authorizes background checks and the sharing of criminal history reports for non-criminal purposes.

Under the law, both the U.S. Attorney General and the Director of the FBI have the authority to determine whether a federal law or state statute explicitly authorize criminal background checks and the sharing of criminal history reports with state agencies for non-criminal purposes. *See* Pub. L 92-544 and 28 C.F.R. § 0.85(j). With its authority, the FBI delineated standards to determine whether a law authorizes background checks and the sharing of criminal history reports for non-criminal purposes. The standards are:

- The authorization must exist as the result of legislative enactment or its functional equivalent;
- The authorization must require fingerprinting of the applicant;
- The authorization must, expressly or by implication, authorize use of FBI records for screening of the applicant;
- The authorization must not be against public policy; and
- The authorization must not be overly broad in its scope, it must identify the specific category of applicants/licensees.

On January 7, 2011, Phillip Collins, Deputy Director of the Crime Information Bureau of the Wisconsin Department of Justice confirmed that the FBI approves s. 440.03 (13), Stats., as meeting the FBI standards listed above to enable DSPS to obtain fingerprints and criminal history reports as part of the physician licensing process. Therefore, Pub. L 92-544 is the federal basis for the proposed changes to s. RL 4.08 that enable DSPS to obtain criminal history reports from the FBI.

The second relevant federal law is the National Child Protection Act of 1993, 42 U.S.C. § 5119a as amended by the Volunteers for Children Act ("VCA"), Public Law 105-251 (1998). The proposed rule does not rely on the amendments made to 42 U.S.C. § 5119a by VCA because the FBI has approved s. 440.03(13) as adequate statutory authority to

enable DSPS to obtain fingerprints and criminal history reports as part of the physician licensing process. However, the Iowa Medical Board utilizes 42 U.S.C. § 5119a to enable the Board to require applicants for physician licenses to submit fingerprints and the Board to obtain criminal history reports from the FBI as a part of the Board's licensure process. The Iowa Board relies on the amendments made to 42 U.S.C. § 5119a by VCA because the FBI has approved 42 U.S.C. § 5119a as meeting the standards listed above but has not approved any Iowa statute as meeting the standards.

The Volunteers for Children Act enables state agencies and businesses that are designated as "qualified entities" by an authorized state agency to require "providers" to submit fingerprints for non-criminal background checks. Under the law, a "qualified entity" is "a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services." 42 U.S.C. § 5119c. A "provider" is a person who wants to own, be employed by, be licensed by or volunteer at a "qualified entity." *Id.* The authorized state agency in Iowa has designated the Iowa Medical Board as a "qualified entity" and applicants as "providers." Therefore, the Iowa Medical Board is able to require background checks and obtain criminal history reports for the non-criminal purpose of reviewing applicants for physician licenses.

Comparison with rules in adjacent states:

Illinois: Illinois statute requires applicants for medical licensure to provide fingerprints for a criminal background check. 225 ILCS 60/9.7. The statute further requires the Illinois Department of Professional Regulation to promulgate rules to implement the requirement. *Id.* However, a review of Illinois' application and online instructions indicates that Illinois currently does not require applicants for physician licenses to submit fingerprints or undergo background checks. *See* <http://www.idfpr.com/dpr/WHO/med.asp>, accessed on Jan. 3, 2011.

Iowa: Iowa administrative rules require applicants for medical licensure to pay for and provide a full set of fingerprints for state and federal criminal background checks. IAC 653-9.4(2)p., 9.5(3)p., 9.6(2)j. and 8.4(7). Iowa promulgated the administrative rules based on the federal National Child Protection Act of 1993, 42 U.S.C. § 5119a as amended by the Volunteers for Children Act, Public Law 105-251 (1998). As mentioned above, the Volunteers for Children Act is approved by the FBI as a basis to enable "qualified entities" to require "providers" to submit fingerprints for non-law enforcement criminal background checks.

Michigan: Michigan statute requires applicants for medical licenses to provide fingerprints for state and federal criminal background checks. MCL 333.16174(3).

Minnesota: Minnesota currently does not require applicants for medical licenses to undergo criminal background checks.

Summary of factual data and analytical methodologies:

In February 2010, DSPS was awarded an American Recovery and Reinvestment Act grant to lead a group of ten state medical and osteopathic boards to reduce barriers to the portability of physician licenses. Since the award, DSPS has worked with the boards in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri and South Dakota to develop best practices to improve the licensing process of physicians. In November, the states identified requiring applicants to submit fingerprints and undergo criminal background as a best practice.

The background check requirement conforms to longstanding recommendations by the Federation of State Medical Boards (“FSMB”). Since April 2001, FSMB has affirmed its position that it is a best practice for state medical boards to “conduct criminal background checks as part of the licensure application process.” See Federation of State Medical Boards, *Public Policy Compendium*, April 2010. The FSMB reaffirmed its position in April 2010. *Id.*

Further, as of September 2010, 35 out of 68 U.S. medical and osteopathic boards require applicants to submit fingerprints and undergo criminal background checks as part of the application process. FSMB, *Criminal Background Checks Overview by State*, Last Updated September 6, 2010, at http://www.fsmb.org/pdf/GRPOL_Criminal_Background_Checks.pdf.

Analysis and supporting documents used to determine effect on small business or in preparation of economic report:

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. DSPS is not included as an “agency” in this section. Nonetheless, the department’s Small Business Review Advisory Committee was consulted to determine whether the proposed rule would have any impact on small business in Wisconsin. The Committee concluded that the proposed rule will not have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

Anticipated costs incurred by the private sector:

Every person seeking initial licensure to practice medicine and surgery in Wisconsin will incur the cost of conducting the criminal background check. The cost to the applicant of conducting a criminal background check is approximately \$56.25. The cost is the price the department charges applicants for the professions for which it currently requires the same criminal background check process.

Fiscal estimate:

The department estimates that the proposed rule will have no significant fiscal impact.

Effect on small business:

On May 19, 2011, the department's Small Business Review Advisory Committee determined that the proposed rule will not have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

Agency contact person:

Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email at Shancethea.L Leatherwood@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to Shancethea.L Leatherwood@wisconsin.gov. Comments must be received on or before August 1, 2011, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. RL 4.08 (intro) is renumbered RL 4.08(1) and amended to read:

RL 4.08 Photographs and fingerprints. (1) The department may require an applicant for any of the credentials set forth in s. RL 4.07 and not listed in sub. (2) to be photographed and fingerprinted as a part of the credentialing process, if there exists reason to believe that the applicant has failed to accurately describe his or her conviction record. The department may refer photographs and fingerprints so obtained to the department of justice for internal analysis or submission to the federal bureau of investigation for the purpose of verifying the identity of the ~~persons~~ applicant fingerprinted and obtaining records of ~~their~~ his or her criminal arrests and convictions.

SECTION 2. RL 4.08 (2) is created to read:

The department shall require an applicant for a physician license under s. 448.02 to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the applicant's fingerprints. The department of justice may submit the fingerprint cards to the federal bureau of investigation for the purpose of verifying the identity of the applicant fingerprinted and obtaining records of his or her criminal arrests and convictions. The department shall charge the applicant any fees, costs, or other expenses incurred in conducting any investigation under this rule.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____ Agency _____

Ch. RL 4 CR 11-027 (Background Check)



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{Gen} relating to: prohibiting fingerprinting in connection with
2 professional credentials issued by the Department of Safety and Professional
3 Services or an examining board or affiliated credentialing board.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Safety and Professional Services (DSPS) and examining boards and affiliated credentialing boards under DSPS administer Wisconsin's professional credentialing laws. Current law requires DSPS to obtain fingerprints from the following persons:

1. An applicant for a private detective license or private security permit.
2. An applicant for a juvenile martial arts instructor permit.
3. An applicant for or a holder of numerous other professional credentials in connection with an investigation by DSPS concerning whether an applicant or credential holder has been charged with or convicted of a crime.

* Those fingerprints may be submitted by the department of justice to the federal
* bureau of investigation to verify the identity of the person fingerprinted and obtain records of the person's criminal history, if any.

This bill prohibits DSPS or an examining board or affiliated credentialing board from requiring that an applicant for or a holder of a professional credential issued by DSPS or a board submit fingerprints in connection with that credential,

including any investigation conducted by DSPS concerning the criminal charges or convictions, if any, of an applicant or credential holder.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 440.03 (13) (a) of the statutes is amended to read:

2 440.03 (13) (a) The department may conduct an investigation to determine
3 whether an applicant for a credential issued under chs. 440 to 480 satisfies any of
4 the eligibility requirements specified for the credential, including whether the
5 applicant does not have an arrest or conviction record. In conducting an
6 investigation under this paragraph, and subject to par. (b) and s. 440.15, the
7 department may require an applicant to provide any information that is necessary
8 for the investigation, ~~except that, for an investigation of an arrest or conviction~~
9 ~~record, the department shall comply with the requirements of pars. (b) and (c).~~

History: 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340; 1989 a. 31, 340; 1991 a. 39; 1993 a. 16, 102, 107, 443, 445, 490, 491; 1995 a. 27 ss. 6472g, 6472j, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312, 313, 318; 1997 a. 231, 237; 1997 a. 261 ss. 1 to 4, 7, 10, 13; 1997 a. 311; 1999 a. 9, 32; 2001 a. 16, 66, 80; 2003 a. 151; 2005 a. 25; 2007 a. 20 ss. 3449 to 3462, 9121 (6) (a); 2007 a. 153, 189; 2009 a. 28, 130, 276, 282, 355; 2011 a. 32.

10 **SECTION 2.** 440.03 (13) (b) (intro.) of the statutes is amended to read:

11 440.03 (13) (b) (intro.) The department may investigate whether an applicant
12 for or holder of any of the following credentials has been charged with or convicted
13 of a crime only pursuant to rules promulgated by the department under this
14 paragraph, ~~except as provided in par. (c):~~

History: 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340; 1989 a. 31, 340; 1991 a. 39; 1993 a. 16, 102, 107, 443, 445, 490, 491; 1995 a. 27 ss. 6472g, 6472j, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312, 313, 318; 1997 a. 231, 237; 1997 a. 261 ss. 1 to 4, 7, 10, 13; 1997 a. 311; 1999 a. 9, 32; 2001 a. 16, 66, 80; 2003 a. 151; 2005 a. 25; 2007 a. 20 ss. 3449 to 3462, 9121 (6) (a); 2007 a. 153, 189; 2009 a. 28, 130, 276, 282, 355; 2011 a. 32.

15 **SECTION 3.** 440.03 (13) (c) of the statutes is repealed.

16 **SECTION 4.** 440.15 of the statutes is created to read:

17 **440.15 No fingerprinting.** The department or a credentialing board may not
18 require that an applicant for a credential or a credential holder be fingerprinted or
19 submit fingerprints in connection with the department's or the credentialing board's

Gallagher, Michael

From: Scholz, AJ
Sent: Monday, November 14, 2011 2:14 PM
To: Gallagher, Michael
Subject: Submitted: LRB 11-2975/1 Topic: Prevent DSPS from requiring fingerprints for licensure for private professions?body=

Hello Mike,

Rep Severson has one requested change. The draft states that even in cases of an investigation under s 440.03 (13) fingerprinting is not permitted. He would like this to be an exception to the rule. So on page 3 line 1 rather than saying including, he would prefer the term excluding.

So as an overall application for a credential, the department may not request fingerprinting, however under on investigation for reasoning provided in s. 440.03 (13), they can.

I hope that makes sense. Thank you for your help with this.

Sincerely,

AJ Scholz

Office of Representative Erik Severson
608-267-2365
312 North, State Capitol



IN: 11/16

State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2975/1
MPG:med:rs

2

Stays

2011 BILL

Insert

1 AN ACT *to repeal* 440.03 (13) (c); *to amend* 440.03 (13) (a) and 440.03 (13) (b)
2 (intro.); and *to create* 440.15 of the statutes; **relating to:** prohibiting
3 fingerprinting in connection with professional credentials issued by the
4 Department of Safety and Professional Services or an examining board or
5 affiliated credentialing board.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Safety and Professional Services (DSPS) and examining boards and affiliated credentialing boards under DSPS administer Wisconsin's professional credentialing laws. Current law requires DSPS to obtain fingerprints from the following persons:

1. An applicant for a private detective license or private security permit.
2. An applicant for a juvenile martial arts instructor permit.
3. An applicant for or a holder of numerous other professional credentials in connection with an investigation by DSPS concerning whether an applicant or credential holder has been charged with or convicted of a crime.

Those fingerprints may be submitted by the department of justice to the federal bureau of investigation to verify the identity of the person fingerprinted and obtain records of the person's criminal history, if any.

This bill prohibits DSPS or an examining board or affiliated credentialing board from requiring that an applicant for or a holder of a professional credential issued by DSPS or a board submit fingerprints in connection with that credential,

BILL

except for
~~including~~ any investigation conducted by DSPS concerning the criminal charges or convictions, if any, of an applicant or credential holder.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 440.03 (13) (a) of the statutes is amended to read:

2 440.03 (13) (a) The department may conduct an investigation to determine
3 whether an applicant for a credential issued under chs. 440 to 480 satisfies any of
4 the eligibility requirements specified for the credential, including whether the
5 applicant does not have an arrest or conviction record. In conducting an
6 investigation under this paragraph, and subject to par. (b) and s. 440.15, the
7 department may require an applicant to provide any information that is necessary
8 for the investigation, ~~except that, for an investigation of an arrest or conviction~~
9 ~~record, the department shall comply with the requirements of pars. (b) and (c).~~

10 **SECTION 2.** 440.03 (13) (b) (intro.) of the statutes is amended to read:

11 440.03 (13) (b) (intro.) The department may investigate whether an applicant
12 for or holder of any of the following credentials has been charged with or convicted
13 of a crime only pursuant to rules promulgated by the department under this
14 paragraph, ~~except as provided in par. (e):~~

15 **SECTION 3.** 440.03 (13) (c) of the statutes is repealed.

16 **SECTION 4.** 440.15 of the statutes is created to read:

EXCEPT AS PROVIDED UNDER S. 440.03(13)(C)

17 **440.15 No fingerprinting.** The department or a credentialing board may not
18 require that an applicant for a credential or a credential holder be fingerprinted or
19 submit fingerprints in connection with the department's or the credentialing board's

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credentialing, including any investigation conducted by the department under s.

2

440.03 (13)

3

(END)

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FROM THE
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1 INSERT 2-14

2 **SECTION 1.** 440.03 (13) (c) of the statutes is amended to read:

3 440.03 (13) (c) The department shall require ~~an applicant for a private~~
4 ~~detective license or a private security permit under s. 440.26, an applicant for a~~
5 ~~juvenile martial arts instructor permit under sub. (17), and a person for whom the~~
6 department conducts an investigation under par. (b); to be photographed and
7 fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's
8 fingerprints. The department of justice may submit the fingerprint cards to the
9 federal bureau of investigation for the purpose of verifying the identity of the persons
10 fingerprinted and obtaining records of their criminal arrests and convictions.

History: 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340; 1989 a. 31, 340; 1991 a. 39; 1993 a. 16, 102, 107, 443, 445, 490, 491; 1995 a. 27 ss. 6472g, 6472j, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312, 313, 318; 1997 a. 231, 237; 1997 a. 261 ss. 1 to 4, 7, 10, 13; 1997 a. 311; 1999 a. 9, 32; 2001 a. 16, 66, 80; 2003 a. 151; 2005 a. 25; 2007 a. 20 ss. 3449 to 3462, 9121 (6) (a); 2007 a. 153, 189; 2009 a. 28, 130, 276, 282, 355; 2011 a. 32.

11 **END INSERT 2-14**

Gallagher, Michael

From: Scholz, AJ
Sent: Friday, December 16, 2011 9:45 AM
To: Gallagher, Michael
Subject: RE: LRB 2975/2

Hello Mike,

The intent the Representative is looking for is to establish rules as to when the department would require an investigation, right now it seems rather vague. The have no, that I can find, established guidelines as to what constitutes a valid reason for beginning an investigation into a person background. They could fingerprint everybody who applies under the explanation of it being necessary for an investigation. While I am not sure what those guidelines might look like, the statutes seem relatively vague on that point.

So in summary, we are looking to have more defined guidelines as to when the department can conduct on investigation under the authority given to them in statute.

I hope that makes the intent a little clearer. If not feel free to give me a call (7-2365) and I can try to be more clear.

Thanks for all your help with this

AJ Scholz

Office of Representative Erik Severson
608-267-2365
312 North, State Capitol

From: Gallagher, Michael
Sent: Friday, December 16, 2011 8:36 AM
To: Scholz, AJ
Subject: RE: LRB 2975/2

AJ:

I am trying to understand what the intent is under your point 2 below. Under current law, s. 440.03 (13) (c), stats., already provides criteria for when a fingerprint can be taken. Specifically, that section requires the department to take fingerprints every time the department conducts an investigation under 440.03 (13) (b) and for every applicant for a private detective license or a private security permit or a juvenile martial arts instructor permit. And, s. 440.15, stats., which is created in the draft, would prohibit the department or a board from taking fingerprints in any other circumstance.

Can you give me more information regarding what you want the department to do in its rulemaking? Do you want me to include language in s. 440.03 (13) (c), stats., that simply requires the department to promulgate rules to "implement" that paragraph? Of course, the department already has the authority to promulgate rules to implement the paragraph under ch. 227, but the department is not required to do so.

Let me know how you would like to proceed.

Thanks.

Mike

Michael P. Gallagher
Legislative Attorney
Legislative Reference Bureau
(608) 267-7511
michael.gallagher@legis.wisconsin.gov

From: Scholz, AJ
Sent: Thursday, December 15, 2011 9:04 AM
To: Gallagher, Michael
Subject: LRB 2975/2

Hey Michael,

We have another round of revisions for LRB 2975. There are two things the Representative would like to change.

One: Section 2 of the draft eliminates fingerprinting for private detective or private security and juvenile martial arts instructors. We would like that to be restored. So the Department may continue to require fingerprints for those areas.

Two: We kept that they may require fingerprinting in cases of a department investigation. We would like to require the Department to establish by rule a set of criteria for when they are going to use this authority.

If either change is not clear by my email or if you have any questions, you can contact me at 7-2365

Thanks for all your help with this

AJ Scholz
Office of Representative Erik Severson
608-267-2365
312 North, State Capitol



In: 12/21/2011

State of Wisconsin 2011 - 2012 LEGISLATURE



LRB-2975/8
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2011 BILL

Insert
Peggy

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except as provided in the statutes, and requiring the exercise of rule-making authority

1 AN ACT to amend 440.03 (13) (b) (intro.) and 440.03 (13) (c); and to create 440.15
2 of the statutes; relating to: prohibiting fingerprinting in connection with
3 professional credentials issued by the Department of Safety and Professional
4 Services or an examining board or affiliated credentialing board

Analysis by the Legislative Reference Bureau

Under current law, the Department of Safety and Professional Services (DSPS) and examining boards and affiliated credentialing boards under DSPS administer Wisconsin's professional credentialing laws. Current law requires DSPS to obtain fingerprints from the following persons:

1. An applicant for a private detective license or private security permit.
2. An applicant for a juvenile martial arts instructor permit.
3. An applicant for or a holder of numerous other professional credentials in connection with an investigation by DSPS concerning whether an applicant or credential holder has been charged with or convicted of a crime.

Those fingerprints may be submitted by the department of justice to the federal bureau of investigation to verify the identity of the person fingerprinted and obtain records of the person's criminal history, if any.

This bill prohibits DSPS or an examining board or affiliated credentialing board from requiring that an applicant for or a holder of a professional credential issued by DSPS or a board submit fingerprints in connection with that credential,

Insert A

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or whether
including rules that establish
the criteria that the department will use to
determine when an investigation under this paragraph
is necessary

except for any investigation conducted by DSPS concerning the criminal charges or convictions, if any, of an applicant or credential holder.

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, *plain* except as provided in par. (c):

6 **SECTION 2.** 440.03 (13) (c) of the statutes is amended to read:

7 440.03 (13) (c) The department shall require ~~an applicant for a private~~
8 ~~detective license or a private security permit under s. 440.26, an applicant for a~~
9 ~~juvenile martial arts instructor permit under sub. (17), and a person for whom the~~
10 department conducts an investigation under par. (b), to be photographed and
11 fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's
12 fingerprints. The department of justice may submit the fingerprint cards to the
13 federal bureau of investigation for the purpose of verifying the identity of the persons
14 fingerprinted and obtaining records of their criminal arrests and convictions.

15 **SECTION 3.** 440.15 of the statutes is created to read:

16 **440.15 No fingerprinting.** Except as provided under s. 440.03 (13) (c), the
17 department or a credentialing board may not require that an applicant for a
18 credential or a credential holder be fingerprinted or submit fingerprints in
19 connection with the department's or the credentialing board's credentialing.

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

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This bill prohibits DSPS or an examining board or affiliated credentialing board from requiring that an applicant for or a holder of a professional credential issued by DSPS or a board submit fingerprints in connection with that credential, except as described above with respect to DSPS. The bill also requires that DSPS promulgate rules that establish the criteria DSPS will use to determine whether an investigation concerning a credential applicant's or credential holder's arrest or conviction record is necessary.

END INSERT A

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

LRB-2975(P)dn ³

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Date

Representative Severson:

Please review this draft carefully to ensure that it is consistent with your intent.

As AJ Scholz requested, this draft requires the Department of Safety and Professional Services (DSPS) to promulgate rules that establish the criteria under which DSPS will conduct an investigation of a credential applicant's or credential holder's arrest or conviction record. Please let me know whether you want to include a delayed effective date to allow DSPS to promulgate those rules. Also, do you want to exempt the rules required in the draft from the requirement to provide an economic impact analysis or any other requirements for rules promulgation?

Finally, please note that DSPS currently has rules regarding when it may conduct an investigation of a credential applicant's or credential holder's arrest or conviction record. Specifically, Wis. Adm. Code s. SPS 4.07 provides that DSPS shall (rather than "may" as s. 440.03 (13) (a) and (b) provide) conduct such an investigation for a credential applicant with respect to the credentials listed in that section of the administrative code. With respect to a credential holder, Wis. Adm. Code s. SPS 4.09 establishes that DSPS "may investigate whether a holder of any of the credentials set forth in s. SPS 4.07 has been arrested, charged with or convicted of a crime for the purposes of determining whether the circumstances of the arrest, charge or conviction substantially relate to the circumstances of the credentialed activity." You may want to take a look at those provisions in the administrative code to determine if there is something more or different that you want to require DSPS to do.

Michael P. Gallagher
Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov

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

LRB-2975/3dn
MPG:med:jm

December 29, 2011

Representative Severson:

Please review this draft carefully to ensure that it is consistent with your intent.

As AJ Scholz requested, this draft requires the Department of Safety and Professional Services (DSPS) to promulgate rules that establish the criteria under which DSPS will conduct an investigation of a credential applicant's or credential holder's arrest or conviction record. Please let me know whether you want to include a delayed effective date to allow DSPS to promulgate those rules. Also, do you want to exempt the rules required in the draft from the requirement to provide an economic impact analysis or any other requirements for rules promulgation?

Finally, please note that DSPS currently has rules regarding when it may conduct an investigation of a credential applicant's or credential holder's arrest or conviction record. Specifically, Wis. Adm. Code s. SPS 4.07 provides that DSPS shall (rather than "may" as s. 440.03 (13) (a) and (b) provide) conduct such an investigation for a credential applicant with respect to the credentials listed in that section of the administrative code. With respect to a credential holder, Wis. Adm. Code s. SPS 4.09 establishes that DSPS "may investigate whether a holder of any of the credentials set forth in s. SPS 4.07 has been arrested, charged with or convicted of a crime for the purposes of determining whether the circumstances of the arrest, charge or conviction substantially relate to the circumstances of the credentialed activity." You may want to take a look at those provisions in the administrative code to determine if there is something more or different that you want to require DSPS to do.

Michael P. Gallagher
Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov

Godwin, Gigi

From: Scholz, AJ
Sent: Monday, January 30, 2012 2:21 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-2975/3 Topic: Prevent DSPS from requiring fingerprints for licensure for private professions

Please Jacket LRB 11-2975/3 for the ASSEMBLY.