



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4384/P1⁰¹
MED&MDK:ahe&amn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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no changes

PM has been run

1 **AN ACT to renumber and amend 227.51 (3); to amend 440.03 (4), 440.205,**
2 **440.22 (1), 440.22 (2), 448.02 (4), 448.02 (8) (a), 448.02 (9) (intro.), 448.675 (2)**
3 **and 450.01 (24); and to create 227.51 (3) (c) of the statutes; relating to:**
4 **wholesale distributors subject to pharmacy examining board requirements and**
5 **enforcement and disciplinary authority of the Department of Safety and**
6 **Professional Services and attached boards and credentialing boards.**

Analysis by the Legislative Reference Bureau

This bill exempts third party logistics providers from regulation as prescription drug wholesale distributors by the pharmacy examining board. The bill also makes the following changes to the enforcement and disciplinary authority of the Department of Safety and Professional Services and attached boards and credentialing boards.

The bill provides that DSPS and its attached boards and credentialing boards may issue an administrative warning regardless of whether the minor violation for which the administrative warning is issued is a first occurrence for the credential holder. Under current law, an administrative warning may be issued only if DSPS or the relevant board finds that the professional credential holder's violation is a first occurrence of a minor violation. The bill also allows DSPS and its attached boards and credentialing boards to summarily limit a credential if certain findings are made justifying such action. Current law allows agencies to summarily suspend, but not limit, credentials if such findings are made.

The bill provides that the interest charged for costs of disciplinary proceedings is compounded annually. Under current law, DSPS and its attached boards may charge the credential holder for all or a part of the costs of a disciplinary proceeding involving that credential holder. Interest upon those costs accrues at the rate of 12 percent annually. The bill also provides that paralegal and real estate specialist costs are included in the costs of disciplinary proceedings.

Finally, the bill makes modifications relating to the circumstances under which DSPS may issue subpoenas in proceedings regarding professional discipline against credential holders and practice without a required credential.

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.** 227.51 (3) of the statutes is renumbered 227.51 (3) (a) and amended
2 to read:

3 227.51 (3) (a) Except as otherwise specifically provided by law, no revocation,
4 suspension, annulment, or withdrawal of any license is lawful unless the agency
5 gives notice by mail to the licensee of facts or conduct which warrant the intended
6 action and the licensee is given an opportunity to show compliance with all lawful
7 requirements for the retention of the license.

8 (b) If an agency finds that public health, safety, or welfare imperatively
9 requires emergency action and incorporates a finding to that effect in its order, the
10 agency may order the summary suspension of a license ~~may be ordered~~ pending
11 proceedings for revocation or other action. Such proceedings shall be promptly
12 instituted and determined.

13 **SECTION 2.** 227.51 (3) (c) of the statutes is created to read:

14 227.51 (3) (c) If an agency finds that public health, safety, or welfare
15 imperatively requires emergency action and incorporates a finding to that effect in
16 its order, the agency may order the summary limitation of a license pending

1 proceedings for revocation or other action. Such proceedings shall be promptly
2 instituted and determined. This paragraph applies only to an agency described in
3 s. 440.03 (1).

4 **SECTION 3.** 440.03 (4) of the statutes is amended to read:

5 440.03 (4) The department may issue subpoenas for the attendance of
6 witnesses and the production of documents or other materials prior to and during the
7 commencement of investigation and prosecution of disciplinary proceedings matters
8 and prior to and during the investigation of practice without a required credential.

9 **SECTION 4.** 440.205 of the statutes is amended to read:

10 **440.205 Administrative warnings.** If the department or a board, examining
11 board, or affiliated credentialing board in the department determines during an
12 investigation that there is evidence of misconduct by a credential holder, the
13 department, board, examining board, or affiliated credentialing board may close the
14 investigation by issuing an administrative warning to the credential holder. The
15 department or a board, examining board or affiliated credentialing board may issue
16 an administrative warning under this section only if the department or board,
17 examining board or affiliated credentialing board determines that no further action
18 is warranted because the complaint involves ~~a first occurrence~~ of a minor violation
19 and the issuance of an administrative warning adequately protects the public by
20 putting the credential holder on notice that any subsequent violation may result in
21 disciplinary action. If an administrative warning is issued, the credential holder
22 may obtain a review of the administrative warning through a personal appearance
23 before the department, board, examining board, or affiliated credentialing board
24 that issued the administrative warning. Administrative warnings do not constitute
25 an adjudication of guilt or the imposition of discipline and may not be used as

SECTION 4

1 evidence that the credential holder is guilty of the alleged misconduct. However, if
2 a subsequent allegation of misconduct by the credential holder is received by the
3 department or a board, examining board or affiliated credentialing board in the
4 department, the matter relating to the issuance of the administrative warning may
5 be reopened and disciplinary proceedings may be commenced on the matter, or the
6 administrative warning may be used in any subsequent disciplinary proceeding as
7 evidence that the credential holder had actual knowledge that the misconduct that
8 was the basis for the administrative warning was contrary to law. The record that
9 an administrative warning was issued shall be a public record. The contents of the
10 administrative warning shall be private and confidential. The department shall
11 promulgate rules establishing uniform procedures for the issuance and use of
12 administrative warnings.

13 **SECTION 5.** 440.22 (1) of the statutes is amended to read:

14 440.22 (1) In this section, "costs of the proceeding" means the compensation
15 and reasonable expenses of hearing examiners and of prosecuting attorneys for the
16 department, examining board ~~or~~, affiliated credentialing board, or other board, a
17 reasonable disbursement for the service of process or other papers, amounts actually
18 paid out for certified copies of records in any public office, postage, telephoning,
19 adverse examinations and depositions and copies, expert witness fees, witness fees
20 and expenses, compensation and reasonable expenses of experts, paralegals, real
21 estate specialists, and investigators, and compensation and expenses of a reporter
22 for recording and transcribing testimony.

23 **SECTION 6.** 440.22 (2) of the statutes is amended to read:

24 440.22 (2) In any disciplinary proceeding against a holder of a credential in
25 which the department or an examining board, affiliated credentialing board, or other

1 board in the department orders suspension, limitation, or revocation of the
2 credential, assesses a forfeiture, or reprimands the holder, the department,
3 examining board, affiliated credentialing board, or other board may, in addition to
4 imposing discipline, assess all or part of the costs of the proceeding against the
5 holder. Costs assessed under this subsection are payable to the department. Interest
6 shall accrue on costs assessed under this subsection at a rate of 12 percent per year
7 compounded annually beginning on the date that payment of the costs are due as
8 ordered by the department, examining board, affiliated credentialing board, or other
9 board. Upon the request of the department of safety and professional services, the
10 department of justice may commence an action to recover costs assessed under this
11 subsection and any accrued interest.

12 **SECTION 7.** 448.02 (4) of the statutes, as affected by 2013 Wisconsin Act 240,
13 is amended to read:

14 **448.02 (4) SUSPENSION OR LIMITATION PENDING HEARING.** (a) The board may
15 summarily suspend or limit any license or certificate granted by the board when the
16 board has in its possession evidence establishing probable cause to believe that the
17 holder of the license or certificate has violated the provisions of this subchapter and
18 that it is necessary to suspend or limit the license or certificate immediately to
19 protect the public health, safety, or welfare. The holder of the license or certificate
20 shall be granted an opportunity to be heard during the determination of probable
21 cause. The board chair and 2 board members designated by the chair or, if the board
22 chair is not available, the board vice-chair and 2 board members designated by the
23 vice-chair, shall exercise the authority granted by this paragraph to suspend
24 summarily suspend or limit a license or certificate in the manner provided under par.
25 (b).

1 (b) An order of summary suspension or limitation shall be served upon the
2 holder of the license or certificate in the manner provided in s. 801.11 for service of
3 summons. The order of summary suspension or limitation shall be effective upon
4 service or upon actual notice of the summary suspension or limitation given to the
5 holder of the license or certificate or to the attorney of the license or certificate holder,
6 whichever is sooner. A notice of hearing commencing a disciplinary proceeding shall
7 be issued no more than 10 days following the issuance of the order of summary
8 suspension or limitation. The order of summary suspension or limitation remains
9 in effect until the effective date of a final decision and order in the disciplinary
10 proceeding against the holder or until the order of summary suspension or limitation
11 is discontinued by the board following a hearing to show cause. The holder of the
12 license or certificate shall have the right to request a hearing to show cause why the
13 order of summary suspension or limitation should not be continued and the order of
14 summary suspension or limitation shall notify the holder of the license or certificate
15 of that right. If a hearing to show cause is requested by the holder of the license or
16 certificate, the hearing shall be scheduled on a date within 20 days of receipt by the
17 board of the request for the hearing to show cause.

18 **SECTION 8.** 448.02 (8) (a) of the statutes, as affected by 2013 Wisconsin Act 240,
19 is amended to read:

20 448.02 (8) (a) After an investigation by the board under sub. (3) (a) or by the
21 department under s. 440.03 (3m) or (5), the board may issue a private and
22 confidential administrative warning to a holder of a license or certificate if the board
23 determines that there is evidence of misconduct by him or her. The board may issue
24 an administrative warning under this paragraph only if the board determines that
25 no further action is warranted because the matter involves ~~a first occurrence of~~

1 minor misconduct and the issuance of an administrative warning adequately
2 protects the public by putting the holder of the license or certificate on notice that any
3 subsequent misconduct may result in disciplinary action. The board shall review the
4 determination if the holder of the license or certificate makes a personal appearance
5 before the board. Following the review, the board may affirm, rescind or modify the
6 administrative warning. A holder of a license or certificate may seek judicial review
7 under ch. 227 of an affirmation or modification of an administrative warning by the
8 board.

9 **SECTION 9.** 448.02 (9) (intro.) of the statutes is amended to read:

10 448.02 (9) JUDICIAL REVIEW. (intro.) No injunction, temporary injunction, stay,
11 restraining order or other order may be issued by a court in any proceeding for review
12 that suspends or stays an order of the board to discipline a physician under sub. (3)
13 (c) or to suspend or limit a physician's license under sub. (4), except upon application
14 to the court and a determination by the court that all of the following conditions are
15 met:

16 **SECTION 10.** 448.675 (2) of the statutes is amended to read:

17 448.675 (2) SUSPENSION OR LIMITATION PENDING HEARING. The affiliated
18 credentialing board may summarily suspend or limit a license granted by the
19 affiliated credentialing board for a period not to exceed 30 days pending hearing if
20 the affiliated credentialing board has in its possession evidence establishing
21 probable cause to believe that the licensee has violated the provisions of this
22 subchapter and that it is necessary to suspend or limit the license immediately to
23 protect the public health, safety or welfare. The licensee shall be granted an
24 opportunity to be heard during the determination of whether or not probable cause
25 exists. The affiliated credentialing board may designate any of its officers to exercise

1 the authority granted by this subsection to ~~suspend~~ summarily suspend or limit a
2 license, for a period not exceeding 72 hours. If a license has been summarily
3 suspended or limited by the affiliated credentialing board or any of its officers, the
4 affiliated credentialing board may, while the hearing is in progress, extend the initial
5 period of suspension or limitation for not more than an additional 30 days. If the
6 licensee has caused a delay in the hearing process, the affiliated credentialing board
7 may subsequently suspend or limit the license from the time the hearing is
8 commenced until a final decision is issued or may delegate such authority to the
9 hearing examiner.

10 **SECTION 11.** 450.01 (24) of the statutes is amended to read:

11 450.01 (24) "Wholesale distributor" means a person engaged in the wholesale
12 distribution of prescription drugs, including manufacturers, repackagers, own-label
13 distributors, private label distributors, jobbers, brokers, warehouses, including
14 manufacturers' and distributors' warehouses, manufacturers' exclusive
15 distributors, manufacturers' authorized distributors of record, prescription drug
16 wholesalers and distributors, independent wholesale prescription drug traders, 3rd
17 party logistics providers, retail pharmacies that conduct wholesale distribution, and
18 chain pharmacy warehouses that conduct wholesale distribution.

19 (END)

Walker, Dan

From: Yahn, Nathan - DSPS
Sent: Wednesday, October 11, 2017 3:12 PM
To: LRB.Legal
Subject: Draft Review: LRB -4384/1

Please Jacket LRB -4384/1 for the SENATE.

Duchek, Michael

From: Yahn, Nathan - DSPS
Sent: Friday, January 19, 2018 1:55 PM
To: Duchek, Michael
Subject: Addt'l Change to DSPS Public Safety Proposal (LRBs 4536/1 & 4384/1)

Importance: High

Hi Mike,

The department has one minor additional change (see below) to this bill, which is to remove SECTION 3 from the bill relating to administrative subpoenas.

- **At the locations indicated, amend the bill (“*LRB-4536/1*” & *LRB-4384/1*) as follows:**
1. Page 3, line 4: delete lines 4 to 8.

I'll give you a quick call to further follow up on this email.

Thank you.

Nate

-
Nate Yahn

Legislative Advisor
Office of the Secretary
Wisconsin Department of Safety and Professional Services
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Email: nathan.yahn@wisconsin.gov

www.dsps.wi.gov



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4384/V
MED&MDK:ahe&amn

2017 BILL

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2 440.22 (1), 440.22 (2), 448.02 (4), 448.02 (8) (a), 448.02 (9) (intro.), 448.675 (2)
3 and 450.01 (24); and *to create* 227.51 (3) (c) of the statutes; **relating to:**
4 wholesale distributors subject to pharmacy examining board requirements and
5 enforcement and disciplinary authority of the Department of Safety and
6 Professional Services and attached boards and credentialing boards.

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5 gives notice by mail to the licensee of facts or conduct which warrant the intended
6 action and the licensee is given an opportunity to show compliance with all lawful
7 requirements for the retention of the license.

8 (b) If an agency finds that public health, safety, or welfare imperatively
9 requires emergency action and incorporates a finding to that effect in its order, the
10 agency may order the summary suspension of a license ~~may be ordered~~ pending
11 proceedings for revocation or other action. Such proceedings shall be promptly
12 instituted and determined.

13 **SECTION 2.** 227.51 (3) (c) of the statutes is created to read:

14 227.51 (3) (c) If an agency finds that public health, safety, or welfare
15 imperatively requires emergency action and incorporates a finding to that effect in
16 its order, the agency may order the summary limitation of a license pending

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5 440.03 (4) The department may issue subpoenas for the attendance of
6 witnesses and the production of documents or other materials prior to and during the
7 commencement of investigation and prosecution of disciplinary proceedings matters
8 and prior to and during the investigation of practice without a required credential.

9 **SECTION 4.** 440.205 of the statutes is amended to read:

10 **440.205 Administrative warnings.** If the department or a board, examining
11 board, or affiliated credentialing board in the department determines during an
12 investigation that there is evidence of misconduct by a credential holder, the
13 department, board, examining board, or affiliated credentialing board may close the
14 investigation by issuing an administrative warning to the credential holder. The
15 department or a board, examining board or affiliated credentialing board may issue
16 an administrative warning under this section only if the department or board,
17 examining board or affiliated credentialing board determines that no further action
18 is warranted because the complaint involves ~~a first occurrence of~~ a minor violation
19 and the issuance of an administrative warning adequately protects the public by
20 putting the credential holder on notice that any subsequent violation may result in
21 disciplinary action. If an administrative warning is issued, the credential holder
22 may obtain a review of the administrative warning through a personal appearance
23 before the department, board, examining board, or affiliated credentialing board
24 that issued the administrative warning. Administrative warnings do not constitute
25 an adjudication of guilt or the imposition of discipline and may not be used as

BILL**SECTION 4**

1 evidence that the credential holder is guilty of the alleged misconduct. However, if
2 a subsequent allegation of misconduct by the credential holder is received by the
3 department or a board, examining board or affiliated credentialing board in the
4 department, the matter relating to the issuance of the administrative warning may
5 be reopened and disciplinary proceedings may be commenced on the matter, or the
6 administrative warning may be used in any subsequent disciplinary proceeding as
7 evidence that the credential holder had actual knowledge that the misconduct that
8 was the basis for the administrative warning was contrary to law. The record that
9 an administrative warning was issued shall be a public record. The contents of the
10 administrative warning shall be private and confidential. The department shall
11 promulgate rules establishing uniform procedures for the issuance and use of
12 administrative warnings.

13 **SECTION 5.** 440.22 (1) of the statutes is amended to read:

14 440.22 (1) In this section, "costs of the proceeding" means the compensation
15 and reasonable expenses of hearing examiners and of prosecuting attorneys for the
16 department, examining board ~~or~~, affiliated credentialing board, or other board, a
17 reasonable disbursement for the service of process or other papers, amounts actually
18 paid out for certified copies of records in any public office, postage, telephoning,
19 adverse examinations and depositions and copies, expert witness fees, witness fees
20 and expenses, compensation and reasonable expenses of experts, paralegals, real
21 estate specialists, and investigators, and compensation and expenses of a reporter
22 for recording and transcribing testimony.

23 **SECTION 6.** 440.22 (2) of the statutes is amended to read:

24 440.22 (2) In any disciplinary proceeding against a holder of a credential in
25 which the department or an examining board, affiliated credentialing board, or other

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1 board in the department orders suspension, limitation, or revocation of the
2 credential, assesses a forfeiture, or reprimands the holder, the department,
3 examining board, affiliated credentialing board, or other board may, in addition to
4 imposing discipline, assess all or part of the costs of the proceeding against the
5 holder. Costs assessed under this subsection are payable to the department. Interest
6 shall accrue on costs assessed under this subsection at a rate of 12 percent per year
7 compounded annually beginning on the date that payment of the costs are due as
8 ordered by the department, examining board, affiliated credentialing board, or other
9 board. Upon the request of the department of safety and professional services, the
10 department of justice may commence an action to recover costs assessed under this
11 subsection and any accrued interest.

12 **SECTION 7.** 448.02 (4) of the statutes, as affected by 2013 Wisconsin Act 240,
13 is amended to read:

14 448.02 (4) **SUSPENSION OR LIMITATION PENDING HEARING.** (a) The board may
15 summarily suspend or limit any license or certificate granted by the board when the
16 board has in its possession evidence establishing probable cause to believe that the
17 holder of the license or certificate has violated the provisions of this subchapter and
18 that it is necessary to suspend or limit the license or certificate immediately to
19 protect the public health, safety, or welfare. The holder of the license or certificate
20 shall be granted an opportunity to be heard during the determination of probable
21 cause. The board chair and 2 board members designated by the chair or, if the board
22 chair is not available, the board vice-chair and 2 board members designated by the
23 vice-chair, shall exercise the authority granted by this paragraph to suspend
24 summarily suspend or limit a license or certificate in the manner provided under par.
25 (b).

BILL**SECTION 7**

1 (b) An order of summary suspension or limitation shall be served upon the
2 holder of the license or certificate in the manner provided in s. 801.11 for service of
3 summons. The order of summary suspension or limitation shall be effective upon
4 service or upon actual notice of the summary suspension or limitation given to the
5 holder of the license or certificate or to the attorney of the license or certificate holder,
6 whichever is sooner. A notice of hearing commencing a disciplinary proceeding shall
7 be issued no more than 10 days following the issuance of the order of summary
8 suspension or limitation. The order of summary suspension or limitation remains
9 in effect until the effective date of a final decision and order in the disciplinary
10 proceeding against the holder or until the order of summary suspension or limitation
11 is discontinued by the board following a hearing to show cause. The holder of the
12 license or certificate shall have the right to request a hearing to show cause why the
13 order of summary suspension or limitation should not be continued and the order of
14 summary suspension or limitation shall notify the holder of the license or certificate
15 of that right. If a hearing to show cause is requested by the holder of the license or
16 certificate, the hearing shall be scheduled on a date within 20 days of receipt by the
17 board of the request for the hearing to show cause.

18 **SECTION 8.** 448.02 (8) (a) of the statutes, as affected by 2013 Wisconsin Act 240,
19 is amended to read:

20 448.02 (8) (a) After an investigation by the board under sub. (3) (a) or by the
21 department under s. 440.03 (3m) or (5), the board may issue a private and
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BILL

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12 that suspends or stays an order of the board to discipline a physician under sub. (3)
13 (c) or to suspend or limit a physician's license under sub. (4), except upon application
14 to the court and a determination by the court that all of the following conditions are
15 met:

16 **SECTION 10.** 448.675 (2) of the statutes is amended to read:

17 448.675 (2) SUSPENSION OR LIMITATION PENDING HEARING. The affiliated
18 credentialing board may summarily suspend or limit a license granted by the
19 affiliated credentialing board for a period not to exceed 30 days pending hearing if
20 the affiliated credentialing board has in its possession evidence establishing
21 probable cause to believe that the licensee has violated the provisions of this
22 subchapter and that it is necessary to suspend or limit the license immediately to
23 protect the public health, safety or welfare. The licensee shall be granted an
24 opportunity to be heard during the determination of whether or not probable cause
25 exists. The affiliated credentialing board may designate any of its officers to exercise

BILL**SECTION 10**

1 the authority granted by this subsection to suspend summarily suspend or limit a
2 license, for a period not exceeding 72 hours. If a license has been summarily
3 suspended or limited by the affiliated credentialing board or any of its officers, the
4 affiliated credentialing board may, while the hearing is in progress, extend the initial
5 period of suspension or limitation for not more than an additional 30 days. If the
6 licensee has caused a delay in the hearing process, the affiliated credentialing board
7 may subsequently suspend or limit the license from the time the hearing is
8 commenced until a final decision is issued or may delegate such authority to the
9 hearing examiner.

10 **SECTION 11.** 450.01 (24) of the statutes is amended to read:

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15 distributors, manufacturers' authorized distributors of record, prescription drug
16 wholesalers and distributors, independent wholesale prescription drug traders, 3rd
17 party logistics providers, retail pharmacies that conduct wholesale distribution, and
18 chain pharmacy warehouses that conduct wholesale distribution.

19 (END)