

STATE OF WISCONSIN
REAL ESTATE EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : REAL ESTATE EXAMINING BOARD
REAL ESTATE EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 15-051)

PROPOSED ORDER

An order of the Real Estate Examining Board to create REEB 24.17 (2m), relating to revocation due to felony conviction.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 452.14 (3) (p), Stats.

Statutory authority: ss. 15.08 (5) (b) and 452.07 (1), Stats.

Explanation of agency authority:

The Real Estate Examining Board shall promulgate rules for the guidance of the profession to which it pertains, and define and enforce professional conduct and unethical practices relating to the profession. [s. 15.08 (5) (b), Stats.]

The board shall promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice. [s. 452.07 (1), Stats.]

Related statute or rule: N/A

Plain language analysis:

The board has the authority under s. 15.08 (5) (b), Stats., to “define and enforce professional conduct and unethical practices” for the profession. However, under Wisconsin law, a person generally may not face employment consequences on the basis of an arrest or conviction record unless the circumstances of the crime are substantially related to the circumstances of the particular job or licensed activity. [s. 111.335, Stats.] Under its authority and within the statutory employment discrimination parameters, the board previously promulgated s. REEB 24. 17 (1) and (2), stating that licensees may be subject to discipline for any violation of the law or criminal conviction as long as the circumstances of the violation or conviction are substantially related to real estate practice. The board did not, however, possess the authority to promulgate a rule allowing the discipline of licensees on the basis of a crime if the circumstances of the crime were not substantially related to real estate practice.

2013 Wisconsin Act 288 (Act 288) specifically created an exception to the general employment discrimination statute by prohibiting the board from issuing a license to a person who has been convicted of a felony. [s. 452.25, Stats.] Act 288 also specifically gave the board the authority to revoke, suspend or limit a person's real estate license if the person is convicted of a felony that would bar licensure. [s. 452.14 (3) (p), Stats.] Therefore, under Act 288, the board may revoke a license on the basis of a felony conviction, whether or not the crime is substantially related to real estate practice, without violating Wisconsin's employment discrimination law.

Summary of, and comparison with, existing or proposed federal regulation: None

Comparison with rules in adjacent states:

Illinois: The Department may refuse to issue or renew a license, or may place on probation, suspend or revoke any license based upon the conviction of or plea of guilty or plea of nolo contendere to a felony.

Iowa: The licensing board may revoke or suspend a license for a conviction of a felony related to the profession or occupation of the licensee. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

Michigan: Michigan does not list a felony conviction as a basis for revocation.

Minnesota: Minnesota does not list a felony conviction as a basis for revocation.

Summary of factual data and analytical methodologies:

The Board incorporated the new basis for revocation into the conduct and ethical practices chapter of the rules.

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

This rule was posted for 14 days for economic comments and none were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

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TEXT OF RULE

SECTION 1. REEB 24.17 (2m) is created to read:

REEB 24.17 (2m) FELONY CONVICTION. The board may revoke a license or registration on the basis of a conviction of a felony that is a bar to licensure or registration under s. 452.25 (1) (a), Stats.

SECTION 2. EFFECTIVE DATE. 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.

(END OF TEXT OF RULE)

This Proposed Order of the Real Estate Examining Board is approved for submission to the Governor and Legislature.

Dated _____

Signature _____

Chair
Real Estate Examining Board