

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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| IN THE MATTER OF RULE-MAKING | : | ORDER OF THE |
| PROCEEDINGS BEFORE THE | : | DEPARTMENT OF SAFETY AND |
| DEPARTMENT OF SAFETY AND | : | PROFESSIONAL SERVICES |
| PROFESSIONAL SERVICES | : | ADOPTING EMERGENCY RULES |

The statement of scope for this rule, SS 092-18, was approved by the Governor on August 1, 2018, published in Register 752A1 on August 6, 2018, and approved by the Secretary of the Department of Safety and Professional Services on August 21, 2018.
This emergency rule as approved by the Governor on November 27, 2018

ORDER

An order of the Department of Safety and Professional Services to create SPS 4.035 relating to predetermination of conviction record prior to submitting a full application for licensure.

Analysis prepared by the Department of Safety and Professional Services.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature by SECTION 23m in 2017 Wisconsin Act 278 provides an exemption from a finding of emergency for the adoption of the rule.

ANALYSIS

Statutes interpreted: s. 111.335 (4) (f), Stats.

Statutory authority: s. 111.335 (4) (f) 6., Stats.

Explanation of agency authority:

The Department of Safety and Professional Services may promulgate rules defining uniform procedures for making determinations to be used by the department, the real estate appraisers board, and all examining boards and affiliated credentialing boards attached to the department or an examining board.

Related statute or rule: s. 452.25, Stats.

Plain language analysis:

This rule implements 2017 Act 278. The rule sets out uniform procedures and fees for individuals to receive a predetermination of whether a conviction record will prohibit receiving a credential.

An individual may file an application, pay a fee and submit documentation relating to the conviction record, including police report, criminal complaint, judgment of conviction, compliance with sentencing terms, personal statement and evidence of rehabilitation. The predetermination fee paid is credited towards the credential application fee if the individual applies for the credential within one year of the predetermination decision.

When deciding on a predetermination, the agency will consider the following:

- The severity and nature of the offense.
- The circumstances relative to the offense.
- The age of the individual at the time of the offense.
- The amount of time since the offense occurred.
- Whether the conviction is related to the activities of the profession.
- The individual's actions since the conviction and evidence of rehabilitation.

The individual will be sent notification of the decision no later than 30 days after the agency received the predetermination application. The decision is binding upon the agency if the individual applies for the credential unless there is information which is relevant but was not available at the time of the decision.

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

Comparison with rules in adjacent states:

Illinois: Illinois does not have a predetermination process regarding criminal convictions.

Iowa: Iowa does not have a predetermination process regarding criminal convictions.

Michigan: Michigan does not have a predetermination process regarding criminal convictions.

Minnesota: Minnesota does not have a predetermination process regarding criminal convictions.

Summary of factual data and analytical methodologies:

The Department reviewed the language of 2017 Act 278, and the current Real Estate Examining Board rules which were promulgated pursuant to s. 452.25, Stats.

Fiscal Estimate:

The rules will not have a fiscal impact.

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 Kirsten.Reader@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be

received at or before the public hearing to be held on January 29, 2019 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 4.035 is created to read:

SPS 4.035 (1) An individual who does not possess a credential may apply to the authority, without submitting a full application, for a determination of whether the individual would be disqualified from obtaining a credential based upon a conviction record by submitting all of the following:

- (a) An application for predetermination.
- (b) A fee in the amount of \$68.00.
- (c) Police report or criminal complaint.
- (d) Judgment of conviction.
- (e) Verification of compliance or completion with the terms of the sentencing.
- (f) Personal statement describing the facts that led to each offense and any rehabilitation completed.

(2) The fee under sub. (1) (b) may be applied to the application fee if the individual applies for a credential within 1 year of the determination.

(3) The authority shall review the information related to the conviction record and consider all of the following factors in making a determination:

- (a) The severity and nature of the offense.
- (b) The circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission of the offense and circumstances that may have a bearing on whether the individual might repeat the behavior that was the subject of the offense.
- (c) The age of the individual at the time the offense was committed.
- (d) The length of time that has elapsed since the offense was committed.
- (e) The relationship of the offense to the credentialed practice.
- (f) The individual's activities since the offense, including employment, education, participation in treatment, payment of restitution, and any other factor that may be evidence of rehabilitation.

(4) The authority shall send the written notification of the authority's determination whether the conviction record would disqualify the individual from obtaining a credential due to the individual's conviction record no later than 30 days after receiving the application for a determination.

(5) The determination is binding upon the authority if the individual subsequently applies for a credential, unless there is information relevant to the determination that was not available to the authority at the time of the determination.

SECTION 2. EFFECTIVE DATE. This emergency rule shall take effect upon publication in the official state newspaper.

(END OF TEXT OF RULE)

Dated 12-19-18

Agency /s/ Laura Gutierrez
Secretary
Department of Safety and Professional Services