
Wisconsin Legislative Council

STUDY COMMITTEE MEMO



Memo No. 4

TO: MEMBERS OF THE STUDY COMMITTEE ON OCCUPATIONAL LICENSES

FROM: Margit Kelley, Principal Attorney, and Patrick Ward, Staff Attorney

RE: Preliminary Bill Draft Options for Committee Discussion

DATE: November 8, 2022

This memo describes preliminary bill drafts that Chair Stafsholt has requested for discussion at the November 15, 2022, meeting of the Study Committee on Occupational Licenses. The bill drafts address topics discussed at the study committee's prior meetings.

The study committee may choose to revise the preliminary bill drafts, and may consider whether to recommend the proposals to the Joint Legislative Council for introduction in the 2023-24 legislative session.

SYSTEMS OF REVIEW

Drafts LRB-0470/P1 and LRB-0466/P1 both create a joint review committee on occupational credentials. The membership includes:

- Two majority party senators, one minority party senator, two majority party representatives, and one minority party representative, appointed as are the members of standing committees in their respective houses.
- The Secretary of the Department of Safety and Professional Services (DSPS) or his or her designee.
- The Secretary of the Department of Agriculture, Trade and Consumer Protection (DATCP) or his or her designee.
- A member of the public who is not a credential holder, selected by the Governor, who represents the interests of the public.

Appointments are for four years (unless the status is lost), and Legislative Council staffs the committee.

LRB-0470/P1 Regarding Sunrise Review

The bill draft specifies that no bill or amendment creating a new occupational credential may be acted upon by the Legislature until it has been referred to the joint committee and the committee has submitted a report. The report is submitted to the chief clerks, attached as an appendix to the bill, and then may be referred to a standing committee.

The report must include the following:

- A description of the occupation proposed for regulation, including a list of associations, organizations, and other groups representing practitioners in this state, and an estimate of the number of practitioners that may be affected.
- A description of the problem or problems to be solved by regulation and the reasons why regulation is necessary, including any physical, emotional, or financial harm to clients that may occur from a failure to provide appropriate service, or erroneous or incompetent service, within the usual practice of the occupation.
- Whether licensure, certification, or registration is the least restrictive form of regulation that is necessary to protect the public health, safety, and welfare.
- The benefit to the public that would result from the proposed regulation.
- A comparison with the approaches used by Wisconsin's neighboring states (Illinois, Iowa, Michigan, and Minnesota) to address regulation of the occupation.
- A recommendation on whether to create the credential as proposed, or to create the credential with modifications.

LRB-0466/P1 Regarding Sunset Review

The committee is required to review each occupational credential on an annual rotating basis, using an eight-year cycle. The committee can divide the occupational credentials into eight groups, to review one group each year, but may review an occupational credential outside that schedule upon request of a legislator that is approved by the co-chairs.

The committee must hold a public hearing at which DSPS or the applicable credentialing board must present the following information:

- Whether licensure, certification, or registration is the least restrictive form of regulation that is necessary to protect the public health, safety, and welfare.
- Whether the practitioners of the profession or occupation exercise independent judgment, and whether the public needs, and can be reasonably expected to benefit from, an assurance of continuing professional or occupational competence.
- Whether the credentialing process impedes applicants with moderate or low incomes.
- The impact on market competition, consumer choice, and cost of services, if known.
- Whether the regulation duplicates activities of other entities or the private sector.
- A comparison with the approaches used by Wisconsin's neighboring states (Illinois, Iowa, Michigan, and Minnesota).
- Whether the conditions that led to the initial regulation have changed.
- Whether other conditions have arisen that would warrant more, less, or the same degree of regulation.
- Any other relevant factors, such as whether credentialing improves access to services through increased market options, satisfaction of insurance provider requirements, or recognition under other state or federal regulations.

The committee must vote on whether to retain, modify, or terminate the credential. If the committee recommends modifying or terminating a credential, it must introduce companion bills in both houses to enact that recommendation, which are then referred to standing committees. If the bills to modify or terminate a credential are introduced on or after February 1 of an even-numbered year, the committee must introduce the bills in the first 30 days of the next legislative session unless either house adversely disposed of either bill.

RECIPROCITY

LRB-0401/P2 Regarding a Preliminary Credential for Out-of-State Applicants

LRB-0401/P2 expands 2021 Wisconsin Act 10 outside of the healthcare professions. The bill draft requires DSPS to grant a preliminary credential to a credential holder from out-of-state, with all the rights and responsibilities of the corresponding state-issued credential, if the applicant and the applicant's employer make certain attestations. The bill draft refers to an out-of-state credential as a "remote credential" that authorizes or qualifies the individual to perform acts that are substantially the same as the acts that an individual who holds a state-issued credential is authorized or qualified to perform.

The applicant must apply for the preliminary credential within 30 days of first providing services in Wisconsin. The application for the preliminary credential must include an attestation that the applicant satisfies all of the following:

- Holds a valid, unexpired remote credential.
- Is not under investigation and does not have any active restrictions or limitations on the remote credential.
- Has applied for a permanent, state-issued credential.

The employer must attest that the employer has confirmed that the individual holds a valid, unexpired remote credential, and that to the best of the employer's knowledge and with a reasonable degree of certainty the individual is not under investigation and does not have any active restrictions or limitations on the remote credential.

The preliminary credential takes effect the date the individual begins providing services in this state. The preliminary credential expires on the date that the application for the corresponding permanent or training credential is granted or denied.

The bill draft does not apply to credentials for transportation network companies, peddlers, unarmed combat sports, and body art and tanning facilities, or to trades occupations regulated under chs. 101 and 145, and s. 167.10 (6m), Stats.

LRB-0462/P2 Regarding Reciprocal Credential Endorsement Standards

LRB-0462/P2 requires DSPS to post on its website whether the credentialing requirements for health care professions in other states qualify for granting a reciprocal health care credential under state law. DSPS must first determine whether a health care credential has provisions to grant a reciprocal credential that require an examination of a state or territory's equivalence, comparability, or similarity in its credentialing requirements.

For each health care credential that has such a requirement, DSPS must compare, in consultation with the relevant credentialing boards, all other states' and territories' credentialing requirements to determine whether the laws qualify for purposes of granting a reciprocal credential under state law.

DSPS must post the results of that review on its website, and must update the review at least every two years.

LRB-0465/P2 Regarding Universal Licensure Recognition

LRB-0465/P2 creates a universal licensure recognition standard. The bill draft requires DSPS or a credentialing board to grant a reciprocal credential to an applicant who holds a credential that authorizes the person to perform the acts authorized under the state-issued credential for which the person is applying, and meets certain other requirements.

In particular, the applicant must be in good standing in the other jurisdiction, and pass an examination on state law related to the practice, if required for the occupation. The individual also must satisfy either of the following qualification requirements:

- Has practiced for at least three of the five years before the application under a scope of practice that is substantially equivalent to the scope of practice for the state-issued credential.
- Was granted the other state's credential based on requirements that are substantially equivalent to the requirements for the credential under state law.

A reciprocal credential under this provision expires on the next applicable renewal date for the credential, unless the renewal date is within 180 days after a reciprocal credential is granted. Renewal is subject to any fees and other requirements that apply for renewing the credential.

RENEWALS

LRB-0364/P2 Regarding Automatic Renewal

LRB-0364/P2 relates to the automatic renewal of health and business credentials under chs. 440 to 480, Stats. The bill draft renews the term of a credential as long as the applicant submits a complete application for renewal before the applicant's current credential expires. Unless DSPS or a credentialing board sends a notice of denial, an applicant who submits a complete application maintains the rights, privileges, and authority conferred by a credential. An application is considered complete when the applicant submits the relevant fee and all forms and other documentation required for the renewal of the credential.

LRB-0450/P2 Regarding Four-Year Renewal Periods

LRB-0450/P2 lengthens the two-year renewal periods for health and business credentials under chs. 440 to 480, Stats., to four-year renewal periods. Where specified in the statutes, the bill draft doubles the corresponding credential's continuing education requirements.

To transition credential holders to the four-year renewal periods, the bill draft specifies that DSPS may, in cooperation with the credentialing boards, phase in the new renewal periods. The transition may allow one two-year renewal to occur after the law takes effect. DSPS also may stagger the renewal dates among credential holders so that approximately half of renewals within a profession occur every two years.

The bill draft specifies that if the four-year renewal period is in place before revised renewal fees are approved by the Joint Committee on Finance, the two-year renewal fee may be doubled. The bill draft also specifies that if a two-year renewal applies to an individual after a four-year renewal fee has been established, the individual is required to pay only one-half of the four-year renewal fee.

If DSPS implements measures to phase in four-year renewal periods or to stagger renewal dates within a profession, the bill draft requires DSPS to do so by administrative rule. The bill draft also grants emergency rulemaking authority to DSPS and the credentialing boards to implement the provisions of the bill draft without making a finding of emergency, and allows the emergency rules to remain in effect until May 1, 2025, or the date on which permanent rules take effect, whichever is sooner. Lastly, the bill draft specifies that its provisions take effect three months following enactment.

STREAMLINING APPLICATIONS

LRB-0363/P3 Regarding Minor Offenses

LRB-0363/P3 relates to an applicant's conviction records considered in the credentialing process. The bill draft allows DSPS to complete its investigation of arrests, convictions, or other offenses without reviewing certain types of violations. Those violations include the following:

- A first conviction, which occurred more than five years before the credential application date, for a violation of a law or local ordinance prohibiting driving or operating a motor vehicle while intoxicated or under the influence of alcohol, a controlled substance, a controlled substance analog, a combination of those, or of any drug that renders the person incapable of safely driving.
- A violation of a law or local ordinance prohibiting underage procurement, possession, or consumption of alcohol.
- A minor, nonviolent ordinance violation, as determined by DSPS.
- A nonviolent offense, as determined by DSPS, for which the person was adjudicated under the Juvenile Justice Code, which occurred more than five years before the credential application date.

The bill draft grants emergency rulemaking authority to DSPS and the credentialing boards to implement the provisions of the bill draft without making a finding of emergency, and allows the emergency rules to remain in effect until July 1, 2025, or the date on which permanent rules take effect, whichever is sooner.

LRB-0367/P3 Regarding a Preliminary Credential for New Graduates

LRB-0367/P3 relates to granting a preliminary credential to an individual who has never possessed the credential. The bill draft creates a preliminary credential that grants a preliminary credential holder all the rights and responsibilities of an individual who holds the corresponding permanent or training credential. The bill draft requires DSPS to grant a preliminary credential to an applicant if the applicant and the applicant's employer make certain attestations.

The applicant must attest that the applicant satisfies all of the following:

- Has never previously held the credential in Wisconsin or another jurisdiction.
- Has completed the required education, training, and supervised experience necessary for the corresponding permanent or training credential within the two years preceding the permanent or training credential application.

- Has passed all examinations required to be eligible for the corresponding permanent or training credential, except any interviews or oral examinations required for an individual by DSPP or a credentialing board in its discretion.
- Does not have an arrest or conviction record that would be the basis for DSPP or a credentialing board to deny the individual's application.
- Meets any other requirements for the corresponding permanent or training credential.
- Has applied for the permanent or training credential that corresponds to the preliminary credential.
- Is engaged with an employer to provide services for that employer within the scope of the corresponding permanent or training credential.

The employer must attest to having engaged the applicant to provide the relevant services for the employer and that, to the best of the employer's knowledge and with a reasonable degree of certainty, the applicant satisfies the requirements for the preliminary credential.

The preliminary credential takes effect the date the employer submits its required attestation or on a later date specified by the employer in the attestation that the applicant will begin providing services. The preliminary credential expires on the date that the application for the corresponding permanent or training credential is granted or denied.

The bill draft does not apply to credentials for transportation network companies, peddlers, unarmed combat sports, and body art and tanning facilities.

CREDENTIAL PROCESSING METRICS

LRB-0365/P2 Regarding Data in a Biennial Report

LRB-0365/P2 requires certain credential processing metrics in DSPP's biennial report to the Legislature. The bill draft would require the following metrics for the time period since the prior report:

- The total number of initial and renewal applications received by the department and any credentialing board, and the number of credentials granted and issued.
- The average number of days from the day that an application is initiated to the date that a final determination is made, as an average for all applications and separate averages for applications in the health professions, business professions, and all other professions.
- The average number of contacts made to and received from an applicant before a final determination on the applicant's credential is issued.
- The total number of applications for which DSPP or a credentialing board requested more information.
- The total number of applications that required DSPP or a credentialing board to review an arrest, conviction, or other offense record.

LRB-0366/P3 Regarding an Application Processing Deadline

LRB-0366/P3 requires a final determination deadline for certain occupations. The bill draft does all of the following:

- For credentials granted by DSPS, requires DSPS to approve, approve with limitations, or deny a complete application within 45 calendar days after the application is initiated.
- For credentials granted by a credentialing board, requires DSPS to forward an application, the results of the department's investigation into the applicant's eligibility, and the department's recommendation to approve the application, deny the application, or conduct further review, within 31 calendar days after the application is initiated.
- Requires a credentialing board to make a final determination within 45 calendar days after the application is initiated.

The bill draft specifies that if an investigation into an applicant's eligibility for a credential is not complete at the end of the 45 calendar days, DSPS or a credentialing board must make a determination on the application based upon the information on hand.

LRB-0467/P2 Regarding Monthly Processing Metrics

LRB-0467/P2 requires DSPS to post certain application processing metrics on its website. For each credential, DSPS must post the following information on its website, updated each month:

- The average number of days from the day that an application for an initial credential or credential renewal is initiated to the date a final determination is made.
- The number of applications submitted for an initial credential or credential renewal over the prior month.
- The number of final determinations made on an application for an initial credential or credential renewal over the prior month, including:
 - The number of applications approved.
 - The number of applications denied.
- The number of applications for an initial credential or credential renewal submitted more than 45 days prior to the last day of the prior month, including:
 - The number of those applications for which necessary information from the applicant or a third party is pending.
 - The number of those applications that are currently undergoing legal review.

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