



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-0363/1
JPC:cjs

2023 ASSEMBLY BILL 202

April 20, 2023 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Regulatory Licensing Reform.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to create** 440.03 (13) (bp), (bt) and (bx) of the statutes; **relating to:**
2 investigations of conviction records by the Department of Safety and
3 Professional Services for purposes of determining eligibility for credentials and
4 granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Occupational Licenses.

Current law prohibits employment discrimination on the basis of a conviction record. This prohibition applies to the Department of Safety and Professional Services (DSPA) and the credentialing boards in granting credentials. However, current law also allows DSPA or a credentialing board to refuse, bar, or terminate an occupational credential due to a prior conviction if the circumstances of the offense are substantially related to circumstances of the licensed activity.

The bill allows DSPA to complete its investigation as to whether the circumstances of an arrest, conviction, or other offense are substantially related to the circumstances

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of the licensed activity 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 that prohibits driving or operating a motor vehicle while intoxicated or under the influence of alcohol, a controlled substance, a controlled substance analog, or a combination of those, or of any drug that renders the person incapable of safely driving.
- A violation of a law or local ordinance that prohibits underage procurement, possession, or consumption of alcohol.
- A minor, nonviolent ordinance violation, as determined by DSPS.

Additionally, the bill creates an alternative method to complete an investigation of an arrest, conviction, or other offense. Under this method, DSPS may accept a determination made by the applicant's employer, or by a contracted entity on behalf of the employer, that the applicant does not have an arrest, conviction, or other offense record or that the circumstances related to an arrest, conviction, or other offense are not substantially related to the licensed activity.

An employer, or contracted entity on behalf of the employer, must attest that the determination was made to the best of the employer's or entity's knowledge and with a reasonable degree of certainty. DSPS must accept or reject a determination within 30 days of its receipt, and within that period may review a determination or request additional information from the applicant. DSPS and the credentialing boards are not subject to suit and are not liable for damages resulting from acceptance of an employer's or entity's determination.

DSPS must implement both provisions of the bill by administrative rule.

1 **SECTION 1.** 440.03 (13) (bp), (bt) and (bx) of the statutes are created to read:

2 440.03 (13) (bp) When conducting an investigation of an arrest or conviction
3 record under par. (a) or (bm), or of any other offense if the offense is reviewable by
4 the department or credentialing board that issues the credential, the department
5 shall review information provided by the applicant to determine the circumstances
6 of each case or offense, except that the department may, in its discretion, complete
7 its investigation without reviewing the circumstances of any of the following types
8 of violations:

9 1. If the violation occurred more than 5 years before the application date, a first
10 conviction for a violation of s. 346.63 (1) (a), (am), or (b) or a local ordinance in
11 conformity therewith or a law of a federally recognized American Indian tribe or
12 band in this state in conformity with s. 346.63 (1) (a), (am), or (b) or the law of another
13 jurisdiction prohibiting driving or operating a motor vehicle while intoxicated or
14 under the influence of alcohol, a controlled substance, a controlled substance analog,

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1 or a combination thereof or under the influence of any drug that renders the person
2 incapable of safely driving, as those or substantially similar terms are used in that
3 jurisdiction's laws.

4 2. A violation of s. 125.07 (4) (a) or (b) or a local ordinance that strictly conforms
5 to s. 125.07 (4) (a) or (b) or of a substantially similar law of another jurisdiction.

6 3. A minor, nonviolent ordinance violation, as determined by the department.

7 (bt) 1. As an alternative to conducting an investigation of an arrest or
8 conviction record under par. (a) or (bm), or of any other offense if the offense is
9 reviewable by the department or credentialing board that issues the credential, the
10 department may accept a determination made by the applicant's employer, or by a
11 contracted entity on behalf of the applicant's employer, that the applicant does not
12 have an arrest or conviction record and that the applicant has not committed any
13 other offense that is reviewable by the department or credentialing board that issues
14 the credential, or that the circumstances related to the arrest or conviction record or
15 of any other offense if the offense is reviewable by the department or credentialing
16 board that issues the credential are not substantially related to the licensed activity
17 pursuant to s. 111.335.

18 2. An applicant's employer or a contracted entity on behalf of an applicant's
19 employer that submits a determination under this paragraph shall attest that the
20 determination was made to the best of the employer's or entity's knowledge and with
21 a reasonable degree of certainty.

22 3. Prior to accepting a determination made under this paragraph, the
23 department may review the determination made by the employer or the entity
24 contracted by the employer and may request additional information from the
25 applicant.

