



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4536/2
MED&MDK:ahe&amn

2017 ASSEMBLY BILL 902

January 31, 2018 - Introduced by Representative BALLWEG, cosponsored by Senator KAPENGA, by request of Department of Safety and Professional Services. Referred to Committee on Regulatory Licensing Reform.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber and amend* 227.51 (3); *to amend* 440.205, 440.22 (1),
2 440.22 (2), 448.02 (4), 448.02 (8) (a), 448.02 (9) (intro.), 448.675 (2) and 450.01
3 (24); and *to create* 227.51 (3) (c) of the statutes; **relating to:** wholesale
4 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.

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The bill also 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.

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
17 proceedings for revocation or other action. Such proceedings shall be promptly

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1 instituted and determined. This paragraph applies only to an agency described in
2 s. 440.03 (1).

3 **SECTION 3.** 440.205 of the statutes is amended to read:

4 **440.205 Administrative warnings.** If the department or a board, examining
5 board, or affiliated credentialing board in the department determines during an
6 investigation that there is evidence of misconduct by a credential holder, the
7 department, board, examining board, or affiliated credentialing board may close the
8 investigation by issuing an administrative warning to the credential holder. The
9 department or a board, examining board or affiliated credentialing board may issue
10 an administrative warning under this section only if the department or board,
11 examining board or affiliated credentialing board determines that no further action
12 is warranted because the complaint involves ~~a first occurrence of~~ a minor violation
13 and the issuance of an administrative warning adequately protects the public by
14 putting the credential holder on notice that any subsequent violation may result in
15 disciplinary action. If an administrative warning is issued, the credential holder
16 may obtain a review of the administrative warning through a personal appearance
17 before the department, board, examining board, or affiliated credentialing board
18 that issued the administrative warning. Administrative warnings do not constitute
19 an adjudication of guilt or the imposition of discipline and may not be used as
20 evidence that the credential holder is guilty of the alleged misconduct. However, if
21 a subsequent allegation of misconduct by the credential holder is received by the
22 department or a board, examining board or affiliated credentialing board in the
23 department, the matter relating to the issuance of the administrative warning may
24 be reopened and disciplinary proceedings may be commenced on the matter, or the
25 administrative warning may be used in any subsequent disciplinary proceeding as

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1 evidence that the credential holder had actual knowledge that the misconduct that
2 was the basis for the administrative warning was contrary to law. The record that
3 an administrative warning was issued shall be a public record. The contents of the
4 administrative warning shall be private and confidential. The department shall
5 promulgate rules establishing uniform procedures for the issuance and use of
6 administrative warnings.

7 **SECTION 4.** 440.22 (1) of the statutes is amended to read:

8 440.22 (1) In this section, "costs of the proceeding" means the compensation
9 and reasonable expenses of hearing examiners and of prosecuting attorneys for the
10 department, examining board ~~or~~, affiliated credentialing board, or other board, a
11 reasonable disbursement for the service of process or other papers, amounts actually
12 paid out for certified copies of records in any public office, postage, telephoning,
13 adverse examinations and depositions and copies, expert witness fees, witness fees
14 and expenses, compensation and reasonable expenses of experts, paralegals, real
15 estate specialists, and investigators, and compensation and expenses of a reporter
16 for recording and transcribing testimony.

17 **SECTION 5.** 440.22 (2) of the statutes is amended to read:

18 440.22 (2) In any disciplinary proceeding against a holder of a credential in
19 which the department or an examining board, affiliated credentialing board, or other
20 board in the department orders suspension, limitation, or revocation of the
21 credential, assesses a forfeiture, or reprimands the holder, the department,
22 examining board, affiliated credentialing board, or other board may, in addition to
23 imposing discipline, assess all or part of the costs of the proceeding against the
24 holder. Costs assessed under this subsection are payable to the department. Interest
25 shall accrue on costs assessed under this subsection at a rate of 12 percent per year

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1 compounded annually beginning on the date that payment of the costs are due as
2 ordered by the department, examining board, affiliated credentialing board, or other
3 board. Upon the request of the department of safety and professional services, the
4 department of justice may commence an action to recover costs assessed under this
5 subsection and any accrued interest.

6 **SECTION 6.** 448.02 (4) of the statutes, as affected by 2013 Wisconsin Act 240,
7 is amended to read:

8 448.02 (4) SUSPENSION OR LIMITATION PENDING HEARING. (a) The board may
9 summarily suspend or limit any license or certificate granted by the board when the
10 board has in its possession evidence establishing probable cause to believe that the
11 holder of the license or certificate has violated the provisions of this subchapter and
12 that it is necessary to suspend or limit the license or certificate immediately to
13 protect the public health, safety, or welfare. The holder of the license or certificate
14 shall be granted an opportunity to be heard during the determination of probable
15 cause. The board chair and 2 board members designated by the chair or, if the board
16 chair is not available, the board vice-chair and 2 board members designated by the
17 vice-chair, shall exercise the authority granted by this paragraph to suspend
18 summarily suspend or limit a license or certificate in the manner provided under par.
19 (b).

20 (b) An order of summary suspension or limitation shall be served upon the
21 holder of the license or certificate in the manner provided in s. 801.11 for service of
22 summons. The order of summary suspension or limitation shall be effective upon
23 service or upon actual notice of the summary suspension or limitation given to the
24 holder of the license or certificate or to the attorney of the license or certificate holder,
25 whichever is sooner. A notice of hearing commencing a disciplinary proceeding shall

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1 be issued no more than 10 days following the issuance of the order of summary
2 suspension or limitation. The order of summary suspension or limitation remains
3 in effect until the effective date of a final decision and order in the disciplinary
4 proceeding against the holder or until the order of summary suspension or limitation
5 is discontinued by the board following a hearing to show cause. The holder of the
6 license or certificate shall have the right to request a hearing to show cause why the
7 order of summary suspension or limitation should not be continued and the order of
8 summary suspension or limitation shall notify the holder of the license or certificate
9 of that right. If a hearing to show cause is requested by the holder of the license or
10 certificate, the hearing shall be scheduled on a date within 20 days of receipt by the
11 board of the request for the hearing to show cause.

12 **SECTION 7.** 448.02 (8) (a) of the statutes, as affected by 2013 Wisconsin Act 240,
13 is amended to read:

14 448.02 (8) (a) After an investigation by the board under sub. (3) (a) or by the
15 department under s. 440.03 (3m) or (5), the board may issue a private and
16 confidential administrative warning to a holder of a license or certificate if the board
17 determines that there is evidence of misconduct by him or her. The board may issue
18 an administrative warning under this paragraph only if the board determines that
19 no further action is warranted because the matter involves ~~a first occurrence of~~
20 minor misconduct and the issuance of an administrative warning adequately
21 protects the public by putting the holder of the license or certificate on notice that any
22 subsequent misconduct may result in disciplinary action. The board shall review the
23 determination if the holder of the license or certificate makes a personal appearance
24 before the board. Following the review, the board may affirm, rescind or modify the
25 administrative warning. A holder of a license or certificate may seek judicial review

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1 under ch. 227 of an affirmation or modification of an administrative warning by the
2 board.

3 **SECTION 8.** 448.02 (9) (intro.) of the statutes is amended to read:

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

10 **SECTION 9.** 448.675 (2) of the statutes is amended to read:

11 448.675 (2) SUSPENSION OR LIMITATION PENDING HEARING. The affiliated
12 credentialing board may summarily suspend or limit a license granted by the
13 affiliated credentialing board for a period not to exceed 30 days pending hearing if
14 the affiliated credentialing board has in its possession evidence establishing
15 probable cause to believe that the licensee has violated the provisions of this
16 subchapter and that it is necessary to suspend or limit the license immediately to
17 protect the public health, safety or welfare. The licensee shall be granted an
18 opportunity to be heard during the determination of whether or not probable cause
19 exists. The affiliated credentialing board may designate any of its officers to exercise
20 the authority granted by this subsection to suspend summarily suspend or limit a
21 license, for a period not exceeding 72 hours. If a license has been summarily
22 suspended or limited by the affiliated credentialing board or any of its officers, the
23 affiliated credentialing board may, while the hearing is in progress, extend the initial
24 period of suspension or limitation for not more than an additional 30 days. If the
25 licensee has caused a delay in the hearing process, the affiliated credentialing board

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1 may subsequently suspend or limit the license from the time the hearing is
2 commenced until a final decision is issued or may delegate such authority to the
3 hearing examiner.

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

5 450.01 (24) "Wholesale distributor" means a person engaged in the wholesale
6 distribution of prescription drugs, including manufacturers, repackagers, own-label
7 distributors, private label distributors, jobbers, brokers, warehouses, including
8 manufacturers' and distributors' warehouses, manufacturers' exclusive
9 distributors, manufacturers' authorized distributors of record, prescription drug
10 wholesalers and distributors, independent wholesale prescription drug traders, ~~3rd~~
11 party logistics providers, retail pharmacies that conduct wholesale distribution, and
12 chain pharmacy warehouses that conduct wholesale distribution.

13 (END)