



2015 SENATE BILL 482

December 29, 2015 - Introduced by Senators DARLING, L. TAYLOR and HARRIS DODD, cosponsored by Representatives KNUDSON, BALLWEG, BERNIER, E. BROOKS, GANNON, HUTTON, JAGLER, JARCHOW, KNODL, KREMER, KRUG, T. LARSON, MACCO, MURPHY, NOVAK, NYGREN, A. OTT, ROHRKASTE, STEFFEN and TITTL. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to amend* 20.410 (1) (gi); and *to create* 304.01 (3), 304.068, 895.492 and
2 973.031 of the statutes; **relating to:** creating a procedure for granting
3 certificates of qualification for employment.

Analysis by the Legislative Reference Bureau

Under current law, a person who has been convicted of a crime may be ineligible for, or at a disadvantage related to, certain types of employment, occupational licensing, or occupational certification. This bill creates a certificate of qualification for employment (CQE) that is issued by the parole commission and that grants relief to the person from ineligibility or disadvantage related to employment, occupational licensing, or occupational certification.

Under the bill, a court that sentences a person for a nonviolent crime may determine that the person may, at a later date, apply to the Department of Corrections (DOC) for a CQE. The person is eligible to apply for a CQE six months after he or she is sentenced.

The bill requires DOC to assign an investigator to determine, after consulting with courts, prosecutors, and victims of the person, whether to recommend that the parole commission issue a CQE to the person. Under the bill, the investigator is required to recommend that the parole commission issue a CQE if he or she determines that granting a CQE to the person will not pose a risk to public safety, that the CQE will substantially assist the person in obtaining employment or occupational licensing or certification, and that the person is less likely to commit an additional criminal offense if he or she obtains a CQE.

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Under the bill, the parole commission holds a hearing and determines, within 60 days after it receives a recommendation from the investigator, whether to issue a CQE. The bill does not allow the parole commission to issue a CQE that provides relief from ineligibility for certain occupations, licenses, or certifications that are related to certain offenses, that are designed to protect public health and safety, or that have a close connection to the crime for which the person was convicted. Under the bill, generally, if a person who receives a CQE is convicted of a felony or of a Class A or Class B misdemeanor or has his or her probation or extended supervision revoked for committing a criminal offense, the CQE is permanently revoked.

The bill provides limited immunity from civil liability for employers who hire a person who is issued a CQE. Under the bill, the employer is immune from liability for the acts or omissions of the employee unless the employer acted maliciously, with gross negligence, or with intent to cause harm when he or she hired the employee.

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.** 20.410 (1) (gi) of the statutes is amended to read:

2 20.410 (1) (gi) *General operations.* The amounts in the schedule to operate
3 institutions and provide field services and administrative services. All moneys
4 received under s. 303.01 (8) that are attributable to moneys collected from earnings
5 of inmates and residents under s. 303.01 (2) (em) and all moneys received under ss.
6 302.386 (2m) and (3) (d) and, 303.065 (6), and 304.068 (3) (a) shall be credited to this
7 appropriation account.

8 **SECTION 2.** 304.01 (3) of the statutes is created to read:

9 304.01 (3) Pursuant to s. 304.068 (4), the parole commission shall conduct
10 regularly scheduled hearings to consider the applications for certificates of
11 qualification for employment that are recommended for approval by an investigator
12 under s. 304.068 (3).

13 **SECTION 3.** 304.068 of the statutes is created to read:

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1 **304.068 Certificate of qualification for employment. (1) DEFINITIONS.** In
2 this section:

3 (a) “Certificate of qualification for employment” means a certificate issued by
4 the parole commission that provides an offender with relief, except as provided in
5 sub. (4) (b), from a collateral sanction.

6 (b) “Collateral sanction” means a penalty, ineligibility, disability, or
7 disadvantage that is related to employment or to occupational licensing or
8 certification and that is a result of the offender’s criminal record. A collateral
9 sanction does not include confinement in a jail or prison, probation, parole, extended
10 supervision, suspension or revocation of motor vehicle operating privileges,
11 imposition of a forfeiture, fine, assessment, costs of prosecution, or order to pay
12 restitution.

13 (c) “Offender” means a person who has been convicted of a crime and who has
14 been determined to be eligible under s. 973.031 to apply for a certificate of
15 qualification for employment.

16 **(2) ELIGIBILITY.** An offender may apply under this section 6 months after he or
17 she is sentenced.

18 **(3) PROCEDURE; INVESTIGATION AND RECOMMENDATION.** (a) An offender may
19 submit his or her application for a certificate of qualification for employment to the
20 department, and shall pay to the department an application fee of \$50. The
21 department may waive the fee if the offender submits an affidavit in which he or she
22 swears or affirms that he or she is unable to pay the application fee.

23 (b) The department shall assign an employee to conduct an investigation to
24 determine whether to recommend to the parole commission that the offender receive
25 a certificate of qualification for employment. In making his or her determination, the

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1 investigator shall contact and solicit information or comments regarding the
2 offender and his or her suitability for a certificate of qualification for employment
3 from any court that sentenced the offender, any district attorney that prosecuted the
4 offender, and all known victims of crimes committed by the offender.

5 (c) The investigator shall complete his or her investigation, prepare a written
6 report, and make a recommendation to the parole commission within 120 days of
7 receiving the person's application, except that if there are compelling reasons to
8 extend that deadline, the investigator may use an additional 30 days to complete the
9 investigation and make a recommendation. The failure of a person contacted by the
10 investigator under par. (b) to provide information or comments does not preclude the
11 investigator from making his or her recommendation. The investigator shall provide
12 a copy of the written report to the parole commission and to the offender.

13 (d) The investigator shall recommend to the parole commission that the
14 offender receive a certificate of qualification for employment if he or she determines
15 that granting a certificate of qualification for employment to the offender will not
16 pose a risk to public safety, that the certificate of qualification for employment will
17 substantially assist the offender in obtaining employment or occupational licensing
18 or certification, and that the offender is less likely to commit an additional criminal
19 offense if he or she obtains a certificate of qualification for employment.

20 (4) GRANTING OF CERTIFICATE; EXCEPTIONS. (a) If the investigator recommends
21 under sub. (3) that an offender receive a certificate of qualification for employment,
22 the parole commission shall hold a hearing to determine whether to issue a
23 certificate of qualification for employment to the offender. The parole commission
24 shall make its determination within 60 days of receiving the report and
25 recommendation under sub. (3) (c).

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1 (b) The parole commission may not issue a certificate of qualification for
2 employment that provides relief from s. 48.685 (5m), 50.065 (4m), or 111.335 (1) (c),
3 (cg), (cm), (cs), or (d).

4 **(5) REVOCATION OF CERTIFICATE OF QUALIFICATION FOR EMPLOYMENT.** (a) Except
5 as provided in par. (b), if an offender is convicted of a felony or of a Class A or Class
6 B misdemeanor after he or she is issued a certificate of qualification for employment,
7 or if his or her probation, parole, or extended supervision is revoked, the parole
8 commission shall permanently revoke his or her certificate of qualification for
9 employment.

10 (b) The parole commission may not revoke an offender's certificate of
11 qualification for employment because of the offender's commission of an act or
12 offense listed or described in a rule promulgated by the department under s. 301.03
13 (3) (a), or if the offender's probation, parole, or extended supervision is revoked as a
14 result of the offender's commission of a noncriminal act.

15 **(6) DATA COLLECTION; REPORT TO LEGISLATURE.** The department shall prepare an
16 annual report that includes, for each year, the number of applications it receives
17 under this section, the number of applications that are recommended by an
18 investigator for approval, the number of certificates of qualification for employment
19 that are issued by the parole commission, the number of certificates of qualification
20 for employment that are revoked, and the reasons for revocation. The department
21 shall submit the report to the chief clerk of each house of the legislature for
22 distribution to the legislature under s. 13.172 (2).

23 **SECTION 4.** 895.492 of the statutes is created to read:

24 **895.492 Civil liability exemption; certificate of qualification for**
25 **employment.** (1) In this section:

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1 (a) "Employee" has the meaning given in s. 101.01 (3) and also includes a former
2 employee.

3 (b) "Employer" has the meaning given in s. 101.01 (4).

4 (2) An employer who hires an employee who has been issued a certificate of
5 qualification for employment under s. 304.068 is immune from liability for the acts
6 or omissions of the employee unless the employer, when he or she hired the employee,
7 acted maliciously, with gross negligence, or with intent to cause harm.

8 **SECTION 5.** 973.031 of the statutes is created to read:

9 **973.031 Eligibility to apply for a certificate of qualification for**
10 **employment.** The court shall determine, at the time of sentencing, whether the
11 defendant is eligible to apply for a certificate of qualification for employment under
12 s. 304.068. A person who is convicted of a violent crime, as defined in s. 165.84 (7),
13 is not eligible to apply for a certificate of qualification for employment.

14 (END)