

State of Wisconsin



2017 Assembly Bill 829

Date of enactment: April 16, 2018
Date of publication*: April 17, 2018

2017 WISCONSIN ACT 278

AN ACT *to repeal* 452.05 (1) (h) and 452.07 (2); *to renumber* 111.335 (1) (a), 111.335 (1) (cg) 1., 111.335 (1) (cg) 2., 111.335 (1) (cg) 3., 111.335 (1) (cs), 111.335 (1) (cx), 111.335 (1) (d) 2. and 111.335 (1) (e); *to renumber and amend* 111.335 (1) (b), 111.335 (1) (c), 111.335 (1) (cm), 111.335 (1) (cv) and 111.335 (1) (d) 1.; *to amend* 440.03 (13) (d), 452.139 (3) and 452.25 (2) (a); *to repeal and recreate* 440.03 (13) (bm) and 440.03 (13) (d); and *to create* 111.335 (1m), 111.335 (2) (title), 111.335 (3) (title) and 111.335 (4) of the statutes; **relating to:** discrimination based on arrest or conviction record under the fair employment law, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 111.335 (1) (a) of the statutes is renumbered 111.335 (2) (a).

SECTION 2. 111.335 (1) (b) of the statutes is renumbered 111.335 (2) (b) and amended to read:

111.335 (2) (b) Notwithstanding s. 111.322, it is not employment discrimination because of arrest record to refuse to employ or license, or to suspend from employment or licensing, any individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity, except as provided in sub. (4) (a).

SECTION 3. 111.335 (1) (c) of the statutes is renumbered 111.335 (3) (a) and amended to read:

111.335 (3) (a) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who if any of the following applies to the individual:

1. ~~Has~~ Subject to sub. (4) (b) to (d), the individual has been convicted of any felony, misdemeanor, or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; ~~or~~

2. ~~Is~~ The individual is not bondable under a standard fidelity bond or an equivalent bond where such bondability is required by state or federal law, administrative regulation, or established business practice of the employer.

SECTION 4. 111.335 (1) (cg) 1. of the statutes is renumbered 111.335 (4) (i) 1.

SECTION 5. 111.335 (1) (cg) 2. of the statutes is renumbered 111.335 (4) (i) 2.

SECTION 6. 111.335 (1) (cg) 3. of the statutes is renumbered 111.335 (3) (b).

SECTION 7. 111.335 (1) (cm) of the statutes is renumbered 111.335 (3) (c) and amended to read:

111.335 (3) (c) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ as an installer of burglar alarms a person who has been convicted of a felony and has not been pardoned for that felony.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

SECTION 8. 111.335 (1) (cs) of the statutes is renumbered 111.335 (4) (h).

SECTION 9. 111.335 (1) (cv) of the statutes is renumbered 111.335 (3) (d) and amended to read:

111.335 (3) (d) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ in a position in the classified service a person who has been convicted under 50 USC, Appendix, section 462 3811 for refusing to register with the selective service system and who has not been pardoned.

SECTION 10. 111.335 (1) (cx) of the statutes, as affected by 2017 Wisconsin Act 59, is renumbered 111.335 (3) (f).

SECTION 11. 111.335 (1) (d) 1. of the statutes is renumbered 111.335 (1m) (a) and amended to read:

111.335 (1m) (a) ~~In this paragraph, “educational~~ “Educational agency” means a school district, a cooperative educational service agency, a county children with disabilities education board, a state prison under s. 302.01, a juvenile correctional facility, as defined in s. 938.02 (10p), a secured residential care center for children and youth, as defined in s. 938.02 (15g), the Wisconsin Center for the Blind and Visually Impaired, the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, the Mendota Mental Health Institute, the Winnebago Mental Health Institute, a state center for the developmentally disabled, a private school, a charter school, a private, nonprofit, nonsectarian agency under contract with a school board under s. 118.153 (3) (c), or a nonsectarian private school or agency under contract with the board of school directors in a 1st class city under s. 119.235 (1).

SECTION 12. 111.335 (1) (d) 2. of the statutes is renumbered 111.335 (3) (e).

SECTION 12m. 111.335 (1) (e) of the statutes, as created by 2015 Wisconsin Act 135, is renumbered 111.335 (4) (j).

SECTION 13. 111.335 (1m) of the statutes is created to read:

111.335 (1m) DEFINITIONS. In this section:

(b) “Exempt offense” means any of the following:

1. A violation specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095.

2. A violation of the law of another jurisdiction that would be a violation described in subd. 1. if committed in this state.

(c) “State licensing agency” means a licensing agency that is an agency, as defined in s. 227.01 (1).

(d) “Violent crime against a child” means any of the following:

1. A violation of s. 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051, 948.055, 948.07, 948.08, 948.085, 948.095, or 948.30 (2).

2. A felony violation of s. 948.03 (3) or (5) (a) 4.

3. A violation of the law of another jurisdiction that would be a violation described in subd. 1. or 2. if committed in this state.

SECTION 14. 111.335 (2) (title) of the statutes is created to read:

111.335 (2) (title) DISCRIMINATION BECAUSE OF ARREST RECORD; EXCEPTIONS.

SECTION 15. 111.335 (3) (title) of the statutes is created to read:

111.335 (3) (title) DISCRIMINATION BECAUSE OF CONVICTION RECORD; EXCEPTIONS.

SECTION 16. 111.335 (4) of the statutes is created to read:

111.335 (4) DISCRIMINATION IN LICENSING. (a) It is employment discrimination because of arrest record for a licensing agency to refuse to license any individual under sub. (2) (b) or to suspend an individual from licensing under sub. (2) (b) solely because the individual is subject to a pending criminal charge, unless the circumstances of the charge substantially relate to the circumstances of the particular licensed activity and the charge is for any of the following:

1. An exempt offense.
2. A violent crime against a child.

(b) It is employment discrimination because of conviction record for a licensing agency to refuse to license any individual under sub. (3) (a) 1. or to bar or terminate an individual from licensing under sub. (3) (a) 1. because the individual was adjudicated delinquent under ch. 938 for an offense other than an exempt offense.

(c) 1. If a licensing agency refuses to license an individual under sub. (3) (a) 1. or bars or terminates an individual from licensing under sub. (3) (a) 1., the licensing agency shall, subject to subd. 2., do all of the following:

a. State in writing its reasons for doing so, including a statement of how the circumstances of the offense relate to the particular licensed activity.

b. Allow the individual to show evidence of rehabilitation and fitness to engage in the licensed activity under par. (d). If the individual shows competent evidence of sufficient rehabilitation and fitness to perform the licensed activity under par. (d), the licensing agency may not refuse to license the individual or bar or terminate the individual from licensing based on that conviction.

2. The requirements under subd. 1. a. and b. do not apply if a conviction is for an exempt offense.

(d) 1. Competent evidence of sufficient rehabilitation and fitness to perform the licensed activity under par. (c) 1. b. may be established by the production of any of the following:

a. The individual’s most recent certified copy of a federal department of defense form DD-214 showing the person’s honorable discharge, or separation under honorable conditions, from the U.S. armed forces for military service rendered following conviction for any offense

that would otherwise disqualify the individual from the license sought, except that the discharge form is not competent evidence of sufficient rehabilitation and fitness to perform the licensed activity if the individual was convicted of any misdemeanor or felony subsequent to the date of the honorable discharge or separation from military service.

b. A copy of the local, state, or federal release document; and either a copy of the relevant department of corrections document showing completion of probation, extended supervision, or parole; or other evidence that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime along with evidence showing compliance with all terms and conditions of probation, extended supervision, or parole.

2. In addition to the documentary evidence that may be provided under subd. 1. to show sufficient rehabilitation and fitness to perform the licensed activity under par. (c) 1. b., the licensing agency shall consider any of the following evidence presented by the individual:

a. Evidence of the nature and seriousness of any offense of which he or she was convicted.

b. Evidence of all circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission 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. Letters of reference by persons who have been in contact with the individual since the applicant's release from any local, state, or federal correctional institution.

f. All other relevant evidence of rehabilitation and present fitness presented.

(e) A state licensing agency that may refuse to license individuals under sub. (3) (a) 1. or that may bar or terminate an individual from licensure under sub. (3) (a) 1. shall publish on the agency's Internet site a document indicating the offenses or kinds of offenses that may result in such a refusal, bar, or termination.

(f) 1. A state licensing agency that may refuse to license individuals under sub. (3) (a) 1. or that may bar or terminate individuals from licensing under sub. (3) (a) 1. shall allow an individual who does not possess a license to, without submitting a full application and without paying the fees applicable to applicants, apply to the agency for a determination of whether the individual would be disqualified from obtaining the license due to his or her conviction record.

2. A state licensing agency shall make a determination under subd. 1. in writing and send the determination to the applicant no later than 30 days after receiving the application for a determination.

3. A determination made under subd. 1., with respect to convictions reviewed by the state licensing agency as

part of the determination, shall be binding upon the agency if the individual subsequently applies for the applicable license, unless there is information relevant to the determination that was not available to the agency at the time of the determination.

4. A state licensing agency may require a fee to be paid to the agency for a determination issued under subd. 1. of an amount necessary to cover the cost of making the determination.

5. A state licensing agency described in subd. 1. shall create a form on which an individual applying for a determination under subd. 1. may do all of the following:

a. State whether he or she has ever been convicted of a crime.

b. Identify the date of conviction for any crime described under subd. 1. a. and describe the nature and circumstances of the crime.

c. Sign his or her name to attest to the accuracy and truthfulness of the information under subd. 1. a. and b. and, if applicable, to acknowledge the agency's authority to conduct an investigation on the individual.

6. A state licensing agency described in subd. 1. shall promulgate rules to implement this paragraph, except that the department of safety and professional services may promulgate rules defining uniform procedures for making such 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.

SECTION 17. 440.03 (13) (bm) of the statutes is repealed and recreated to read:

440.03 (13) (bm) 1. Upon request by a credentialing board or other board in the department, the department shall conduct an investigation to determine whether an individual seeking a determination by that board under s. 111.335 (4) (f) has an arrest or conviction record. In conducting an investigation under this subdivision, the department may require an individual to provide any information that is necessary for the investigation.

2. Upon application seeking a determination by the department under s. 111.335 (4) (f), the department shall conduct an investigation to determine whether the individual has an arrest or conviction record. In conducting an investigation under this subdivision, the department may require an individual to provide any information that is necessary for the investigation.

SECTION 18. 440.03 (13) (d) of the statutes is amended to read:

440.03 (13) (d) The department shall charge an applicant, including an applicant seeking a determination under s. 111.335 (4) (f), any fees, costs, or other expenses incurred in conducting any investigation under this subsection or s. 440.26. The department shall charge an applicant seeking licensure through the interstate medical licensure compact under s. 448.980, directly or indi-

rectly, for any expenses incurred in conducting any investigation under s. 448.980 (5) (b) 3.

SECTION 19. 440.03 (13) (d) of the statutes, as affected by 2015 Wisconsin Act 116 and 2017 Wisconsin Act (this act), is repealed and recreated to read:

440.03 (13) (d) The department shall charge an applicant, including an applicant seeking a determination under s. 111.335 (4) (f), any fees, costs, or other expenses incurred in conducting any investigation under this subsection or s. 440.26.

SECTION 20. 452.05 (1) (h) of the statutes is repealed.

SECTION 21. 452.07 (2) of the statutes is repealed.

SECTION 22. 452.139 (3) of the statutes is amended to read:

452.139 (3) **LIABILITY FOR NEGLIGENT HIRING.** If a licensee associated with a firm commits a crime under the laws of this state or another wrongful act, the firm may not be held civilly liable for hiring that licensee in a claim brought for negligent hiring if, regardless of whether the firm conducted its own investigation, the firm relied on the investigations conducted by the department under s. 440.03 (13) or on any determination made by the board, including a determination under s. ~~452.07(2)~~ 111.335 (4) (f) or 452.25.

SECTION 23. 452.25 (2) (a) of the statutes is amended to read:

452.25 (2) (a) No person may intentionally submit any false information on a form created by the board under s. 111.335 (4) (f) 5. or 452.05 (1) ~~(h)~~ or (i).

SECTION 23m. Nonstatutory provisions.

(1) Using the procedure under section 227.24 of the statutes, any state licensing agency, as defined in section 111.335 (1m) (c) of the statutes, may promulgate rules that are necessary to implement the changes in this act. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, such an agency is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this subsection remain in effect until May 1, 2019, or the date on which permanent rules take effect, whichever is sooner, and the effective period may not be further extended under section 227.24 (2) of the statutes.

SECTION 25. Effective dates. This act takes effect on the first day of the 4th month beginning after publication, except as follows:

(1) The repeal and recreation of section 440.03 (13) (d) of the statutes takes effect on December 16, 2019.

(2) SECTION 23m (1) of this act takes effect on the day after publication.