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WISCONSIN STATE SENATOR

Testimony on Assembly Bills 902, 903, 904 & 905

Assembly Committee on Regulatory Licensing Reform

February 8, 2018

Thank you Chairman Horlacher for holding a public hearing today on Assembly Bills 902, 903, 904 & 905. I also want to thank Representative Ballweg for co-authoring this legislation on behalf of the Department of Safety and Professional Services.

This legislation was drafted in consultation with the Department of Safety and Professional Services, who conducted extensive outreach to interested stakeholders to find consensus on these bills. I will keep my comments brief, as the department will be providing details on specific points in the legislation.

Assembly Bill 902

Assembly Bill 902 makes a number of sensible changes to the DSPS's enforcement authority that are designed to continuing upholding public safety, while allowing the department flexibility to correct disciplinary issues without taking away someone's livelihood. The bill also removes third party logistics providers from the definition of prescription drug wholesalers, putting Wisconsin in line with recent federal law changes.

Assembly Bill 903

Assembly Bill 903 makes a number of changes to the membership requirements of various credentialing boards, making it easier to fill certain openings and for boards to conduct business. The bill also eliminates a number of outdated or unnecessary statutory requirements that will allow the agency to operate in a more efficient and effective manner. For example, the bill eliminates a provision that requires that certain Cemetery Board statements be notarized or that DSPS publish an annual list of liquefied petroleum retails.

Assembly Bill 904

Assembly Bill 904 makes a number of changes to the department's regulation of buildings. First, AB 904 cleans up language from the 2013 establishment of the uniform commercial building code by applying the procedures to counties in the same manner as other units of government. The bill also updates building code standards for carbon monoxide detection in commercial residential buildings to closely mirror international

recommendations that will improve safety and reduce cost for building owners. Lastly, the bill eliminates a statutory conflict that exists for the applicants to the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board. This change will allow applicants to take the exam before the completion of their education requirements, thus allowing them to get into the workforce sooner after graduation.

Assembly Bill 905

Assembly Bill 905 primarily makes a number of remedial statutory changes identified by the department. The bill also provides greater uniformity to department operations and procedures across professions. Specifically, the bill outlines uniform procedures for conducting hearings, handling complaints, and disciplinary proceedings. This streamlining will ensure the agency is efficient and also ensure that DSPS customers can expect consistency across professions.

Thank you again Mr. Chairman and committee members for holding a hearing today on AB 902, AB 903, AB 904, and AB 905.



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WISCONSIN STATE REPRESENTATIVE

41ST ASSEMBLY DISTRICT

Assembly Bills 902, 903, 904, 905
Testimony of Representative Joan Ballweg
Assembly Committee on Regulatory Licensing
February 8, 2018

Thank you, Chair Horlacher and members of the committee for holding public hearings today on Assembly Bills 902, 903, 904, and 905. These bills were introduced at the request of the Department of Safety and Professional Services (DPS) and I have Nate Yahn from DPS with me to speak in more detail on the legislation.

In my role as co-chair of the Joint Committee for Review of Administrative Rules, I've been able to work closely with DPS and other agencies on administrative code and their relation to state statute. After 2011 Wisconsin Act 21 went into effect, our state agencies began to closely review both their rules and statute to ensure what was on the books was both up-to-date and enforceable through statute. The Assembly's Red Tape Review initiative has contributed to this effort. We want to make sure that any rules we have on book reflect law, are updated, and do not hurt the productivity of Wisconsin's citizens. The four bills before you today are the result of a collaborative review by the department and stakeholders to ensure these goals are met.

Thank you again for hearing this legislation.



DATE: February 8, 2018

TO: Members, Assembly Committee on Regulatory Licensing Reform
The Honorable Cody Horlacher, Chair

FROM: Nate Yahn, Legislative Advisor
Wisconsin Department of Safety and Professional Services

SUBJECT: Assembly Bill 902 (enforcement and disciplinary authority of DPCS and attached boards)

Chairman Horlacher and Committee Members:

The Wisconsin Department of Safety and Professional Services (DPCS) would like to provide some important background information and commentary to committee members as you consider 2017 Wisconsin Assembly Bill 902 (AB 902). AB 902 includes various changes relating to the professional discipline of credential holders and provides necessary clean-up to an existing statutory definition to comply with federal law. The Department supports AB 902.

Public safety is a top priority for DPCS. This sensible reform legislation will help protect and maintain the safety and welfare of Wisconsin's public by making certain modifications to existing state law relating to the enforcement and disciplinary authority of DPCS and its attached boards.

Specifically, AB 902 does the following:

- Allows DPCS and its attached boards to issue an administrative warning regardless of whether the minor violation, for which the warning is issued, is a first occurrence for the credential holder.
 - The purposes of professional discipline are to protect the public, rehabilitate the credential holder, and to deter misconduct by other credential holders. Disciplinary orders may include reprimand (i.e. administrative warnings), suspension, limitation or revocation of the license.
 - *Example:*
 - A pharmacist, who had been previously issued an administrative warning by the Pharmacy Examining Board back in 2010 for failing to talk to a patient about a dispensed prescription medication, was just found to have committed a similar type of minor violation. Since this is the pharmacist's *second* time committing a minor violation, the board would not be able to issue this individual another administrative warning, even if it felt that the violation recently found to have been committed did not compromise public safety or warrant formal discipline.
 - Due to the likely collateral consequences associated with formal discipline (e.g., loss of income, damage to reputation, etc.), credentialing board authorities would like to have the discretionary authority needed to potentially avoid these types of highly impactful situations.

NOTE: Complaints filed against credential holders licensed by DPCS or by its attached boards are processed in DPCS' Division of Legal Services and Compliance, and then screened to determine if an investigation is warranted. Complaints made with sufficient evidentiary support, suggesting that a credential holder has violated a relevant profession-related condition or rule, are opened for investigation and, if appropriate, disciplinary action against the credential holder pursued.

- Allows DSPS and its attached boards to summarily limit a credential, in addition to the existing authority to summarily suspend, if findings justify that such action is needed to protect the public health, safety, or welfare.
 - Summary suspensions are warranted when a credential holder exhibits conduct that creates an imminent risk of serious harm – necessitating immediate suspension to protect the public.
 - Currently, the only available option for DSPS or its attached boards to address imminent public health, safety, or welfare issues is to suspend a person’s credentials, unless respondents stipulate to some less onerous order limiting their credentials. However, there are cases in which a credential holder’s misconduct meets the statutory requirements for a summary suspension, but full suspension of that credential is not necessary in order to protect the public.
 - *Example:*
 - In cases of over-prescribing, the public might be adequately protected if the Controlled Substances Board had the ability to limit a credential prohibiting the prescribing of controlled substances while the case is pending or in hearing.
 - However, in some cases, by allowing a credential to be summarily limited, Wisconsin’s public could still be protected without fully suspending a person’s credentials – helping credential holders avoid income loss and ensuring that the public is not unnecessarily deprived of certain services, particularly in health care.

In addition to the changes relating to professional discipline, AB 902 also removes 3rd party logistics providers from the current statutory definition of “wholesale distributor”, which is a person who is engaged in the wholesale distribution of prescription drugs. Under existing federal law, pursuant to the Drug Supply Chain Security Act, 3rd party logistics providers are not considered to be wholesale distributors and, thus, are prohibited from being licensed in states as such.

If you have any questions, please contact me at (608) 267-9794.



Pharmacy Society
of Wisconsin

One Voice. One Vision.

TO: Members, Assembly Committee on Regulatory Licensing Reform

FROM: Nick Olson, PharmD, AAHIVP
President, Pharmacy Society of Wisconsin

DATE: February 8, 2018

RE: Testimony in Favor of Assembly Bill 902

Chairman Horlacher and members of the Committee on Regulatory Licensing Reform, thank you for the opportunity to provide testimony regarding Assembly Bill 902.

In 2013, Congress passed the Drug Quality and Security Act (DQSA). Within this act, the Drug Supply Chain Security Act (DSCSA) outlines the steps required to track and trace certain prescription drugs. The purpose of this law is to give the FDA more information that can be used to protect patients from exposure to counterfeit, stolen, or contaminated drug supplies.

Under federal law, a third-party logistics provider is "an entity that provides or coordinates warehousing, or other logistics services of a product in interstate commerce on behalf of a manufacturer, wholesale distributor, or dispenser of a product, but does not take ownership of the product, nor have responsibility to direct the sale or disposition of the product." Within DSCSA, there is a provision stating that no state may regulate third-party logistics providers as wholesale distributors. Rather, the FDA has created different standards for licensing and regulating these providers.

Wisconsin law (Wis. Stat. § 450.01(24)) still includes third-party logistics providers within the definition of a "wholesale distributor," which violates federal law (21 U.S.C. § 360eee-4(b)(2)) which states "no State shall regulate third-party logistics providers as wholesale distributors."

This bill would remove third-party logistics providers from the statutory definition of a wholesale distributors in Wisconsin, pursuant to federal law. These entities would still be required to meet the rigorous federal licensing and regulatory requirements of a third-party logistics provider. This bill simply aligns state and federal law.

Thank you for the opportunity to provide testimony on Assembly Bill 902.