

Clearinghouse Rule 14-067

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND
 : PROFESSIONAL SERVICES
DEPARTMENT OF SAFETY AND : ADOPTING RULES
PROFESSIONAL SERVICES : (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to create SPS 4.02 (5s) and 4.10 relating to credential renewal and reinstatement.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 227.11 (2) (a) and s. 440.08 (3) (b)

Statutory authority: s. 227.11 (2) (a) and s. 440.08 (3) (b)

Explanation of agency authority:

s. 227.11 (2) (a), Wis. Stats. Rule-making authority is expressly conferred as follows: (a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency: 1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature. 2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature. 3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

s. **440.08 (3) (b)**, Wis. Stats. The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines are necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

Related statute or rule:

The Department and attached rulemaking authorities have established in rule the requirements for credential reinstatement and expired credential renewal for some of the professions. The Department and attached rulemaking authorities are currently or will be promulgating rules to establish the requirements for the remaining professions.

Plain language analysis:

Current Department rules relating to application procedures need clarification with regards to the appropriate processes for renewing an expired credential and reinstating a surrendered credential, revoked credential, or suspended credential that has not been renewed within 5 years of the renewal date. The proposed rule explicitly states that the initial application process cannot be used for credential reinstatement or expired credential renewal. Credential holders must use the credential reinstatement process or the renewal after 5 years process, as applicable.

Summary of, and comparison with, existing or proposed federal regulation:

None

Comparison with rules in adjacent states:

Illinois: The Illinois Department of Financial and Professional Regulation (IDFPR) does not have a codified definition of reinstatement or a renewal process for expired credentials that applies across professions. 20 ILCS Sec. 2105-125 gives the IDFPR the authority to restore any credential at any time after the suspension, revocation, placement on probationary status, or other disciplinary action taken by the Department with reference to any certificate upon recommendation of the appropriate board.

Iowa: The Iowa Professional Licensing Bureau uses the term “reinstatement” to refer to the reinstatement of a suspended licenses and the issuance of a new license following the revocation or voluntary surrender of a license. If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was

voluntarily surrendered, an initial application for reinstatement may not be made until at least one year has elapsed from the date of the order or the date the board accepted the voluntary surrender IAC 193-7.38. The Iowa Professional Licensing Bureau does not have a codified renewal process for expired credentials that applies across professions.

Michigan: “Reinstatement” is defined as the granting of a license or registration, with or without limitations or conditions, to a person whose license or registration has been revoked. “Relicensure” or “reregistration” is defined as the granting of a registration or license to a person whose license or registration has lapsed for failure to renew within 60 days after the expiration date (Michigan Statutes 339.402).

Minnesota: Minnesota does not have a codified definition of reinstatement or a renewal process for expired credentials that applies across professions.

Summary of factual data and analytical methodologies:

The Department is codifying the appropriate processes for reinstating credentials and renewing expired credentials. Adjacent states’ rules were also reviewed.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule was posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals, for a period of 14 days. No comments were received relating to the economic impact of the rule.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Katie Paff, Program and Policy Analyst, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4472; email at Kathleen.Paff@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Katie Paff, Program and Policy Analyst, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to Kathleen.Paff@wisconsin.gov. Comments must be received at or before the public hearing to be held on January 13, 2015 at 1:00 p.m. to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 4.02 (5s) is created to read:

SPS 4.02 (5s) “Reinstatement” means the process established in rule by the credentialing authority by which a credential holder who has unmet disciplinary requirements and failed to renew the credential within 5 years after the renewal date or whose credential has been surrendered or revoked, may apply to have the credential reinstated, with or without conditions. A credential may not be reinstated through the initial application process.

SECTION 2. SPS 4.10 is created to read:

SPS 4.10 Failure to renew within 5 years after the renewal date. A credential holder who has failed to renew a credential within 5 years after the renewal date holds an expired credential. A credential holder with an expired credential may not reapply for the credential using the initial application process. A credential holder renews an expired credential in accordance with the applicable requirements established in rule by the credentialing authority. This section does not apply to credential holders who have unmet disciplinary requirements or whose credentials have been surrendered or revoked.

SECTION 3. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Dave Ross, Secretary
Department of Safety and
Professional Services