

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY
DEPARTMENT OF SAFETY AND : AND PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING RULES
: (CLEARINGHOUSE RULE 20-004)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal SPS 404.07 (1) (Note); to amend SPS 401.01 (29m), 404.07 (1), 404.10 (1) (b) and (2) (d) 1. and 2., 407.04 (1) (d) and 411.04 (1); and to repeal and recreate SPS 404 (Note 2) and 404.01 (6) relating to the educational approval program.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 440.52 (7) and (10), Stats.

Statutory authority: Sections 15.05 (1) (b), 227.11 (2) (a), 440.52 (3), 440.52 (7), (8) (b), and (10) (c).

Explanation of agency authority:

Section 15.05 (1) (b), Stats., authorizes the secretary of the department to, “promulgate rules for administering ... and performing the duties assigned to the department.”

Section 227.11 (2) (a), Stats., authorizes the department to “promulgate rules interpreting the provision of any statute enforced or administered by the agency.”

Section 440.52 (3), Stats., states that, “the department shall promulgate rules and establish standards necessary to administer this section.”

Section 440.52 (7), Stats., directs the department to promulgate rules and standards to do the following:

“(a) Investigate the adequacy of courses and courses of instruction offered by schools to residents of this state and establish minimum standards for those courses of instruction.

(b) Investigate the adequacy of schools' facilities, equipment, instructional materials, and instructional programs and establish minimum standards for those facilities, equipment, materials, and programs.

- (c) Establish rules, standards, and criteria to prevent fraud and misrepresentation in the sale and advertising of courses and courses of instruction.
- (d) Promulgate rules restricting the negotiability of promissory instruments received by schools in payment of tuition and other charges.
- (e) Establish minimum standards for refund of the unused portion of tuition, fees, and other charges if a student does not enter a course or course of instruction or withdraws or is discontinued from the course.
- (f) Require schools offering courses and courses of instruction to residents of this state to furnish information concerning their facilities, curricula, instructors, enrollment policies, tuition and other charges and fees, refund policies, and policies concerning negotiability of promissory instruments received in payment of tuition and other charges.
- (g) Approve courses of instruction, schools, changes of ownership or control of schools, and teaching locations meeting the requirements and standards established by the department and complying with rules promulgated by the department; publish a list of the schools and courses of instruction approved and a list of the schools that are authorized to use the term "college," "university," "state," or "Wisconsin" in their names; and make those lists of the schools available on the department's Internet site.
- (h) Issue permits to solicitors when all department requirements have been met.
- (i) Require schools to furnish a surety bond in an amount as provided by rule of the department."

Section 440.52 (8) (b), Stats., states that, "the department shall, by rule, specify the amount of the fee for a solicitor's permit" and that "the department shall, by rule, specify the amount of the fee for renewal of a solicitor's permit."

Section 440.52 (10) (c), Stats., states that the department shall establish the fees to be paid as part of the proprietary school approval process.

Related statute or rule: None.

Plain language analysis:

2017 Wisconsin Act 59 eliminated the Educational Approval Board (EAB) and transferred all of its duties to the Department of Safety and Professional Services. This rule project amends the ch. SPS 400 suite to ensure consistency with statutory authority and department structure and available processes.

Included among these changes is the removal of references to the EAB, and replacement of references to a "licensed" school with references to an "approved" school. The rule project also revises an obsolete provision relating to hearings for schools denied certification, as provision for such hearings exists under SPS 1-9. Finally, the rule removes a provision allowing the agency to be designated as a school's agent for service of process.

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

None.

Comparison with rules in adjacent states:

Illinois: The Illinois Board of Higher Education (IBHE) regulates private vocational schools, providing schools with a permit of approval (23 Ill. Admin. Code s. 1095.20). IBHE rules do not specifically provide for a requirement that the school designate an agent for the service of process but do require that the school have a surety bond of no less than \$10,000 (23 Ill. Admin. Code s. 1095.210).

Iowa: Iowa state law requires all schools to register with the Iowa College Student Aid Commission (Iowa Code s. 261B.3). A surety bond of \$50,000 and the designation of a resident agent for the purpose of receiving service in civil actions are required. The Iowa Secretary of State may be served if service cannot otherwise be made (Iowa Code s. 714.18 (1) (a)).

Michigan: Michigan requires licensure of proprietary schools, which provide vocational training but do not confer degrees. Proprietary schools must provide surety of between \$200 and \$10,000 depending on the number of students and whether the school is accredited (Mich. Admin. Code s. R 390.562).

Minnesota: Minnesota law distinguishes between private for-profit schools that offer education at a level less than an associate degree, and those that confer associate degrees and higher.

Schools conferring degrees must register with the Minnesota Office of Higher Education. New schools that have been granted conditional approval for degrees, or have been notified by the U.S. Department of Education that they have fallen below minimum financial standards for continued participation in Title VI, must provide a surety bond of between \$10,000 and \$250,000, or an amount equal in cash, securities, or a letter of credit (Minn. Admin Code s. 136A.646).

Schools that offer educational programs that do not result in an associate degree or higher are required to post a bond, cash, or letter of credit in the amount of 10% of the school's preceding year's net income, or \$10,000, whichever is higher. If the school is located outside of Minnesota, it is required to designate a resident agent authorized to receive service of process. If the designated agent is absent, or the school fails to designate an agent, the secretary of state shall be the resident agent for the purpose of service of process (Minn. Admin. Code s. 136A.822 (6) and (7)).

Summary of factual data and analytical methodologies:

The department reviewed the ch. SPS 400 suite to ensure it is consistent with statutory authority and does not contain obsolete references and aims to correct any inconsistencies and obsolete references with this rule project.

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

The rule was posted on the department's website for 14 days to solicit economic impact comments. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The fiscal estimate and economic impact analysis are attached.

Agency contact person:

Jon Derenne, Administrative Rule Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing scheduled for 11:00 AM on February 21, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 401.01 (29m) is amended to read:

SPS 401.01 (29m) TEACH-OUT. "Teach-out" means an arrangement for the completion of ~~an EAB~~ a department approved program in which a student is enrolled in the event of a school's closure or a school's failure to perform its contractual obligations.

SECTION 2. SPS 404 (Note 2) is repealed and recreated to read:

Note: The forms required in this chapter are available on the department's website at dps.wi.gov, or by request from the Department of Safety and Professional Services, P.O. Box 8366, Madison, Wisconsin 53708-8366, or call (608) 266 - 2112.

SECTION 3. SPS 404.01 (6) is repealed and recreated to read:

(6) A school whose approval has been denied or revoked as provided under sub. (2m) or (5) may request a hearing in conformance with the procedures in chs. SPS 1 to 9.

SECTION 4. SPS 404.07 (1) is amended to read:

SPS 404.07 (1) All schools seeking approval must provide the name and Wisconsin address of a designated agent upon whom any process, notice, or demand may be served. ~~The executive secretary of the educational approval department may be appointed for this purpose.~~

SECTION 5. SPS 404.07 (1) (Note) is repealed.

SECTION 6. SPS 404.10 (1) (b) and (2) (d) 1. and 2. are amended to read:

SPS 404.10 (1) (b) If the school is applying for approval of more than one program, the school shall pay the highest applicable fee specified in par. (a), plus the fee specified in sub. (3) for each additional program for which the school requests approval.

(2) (d) ~~Licensed~~Approved schools shall pay annual renewal fees in 2 parts.

- 1.** Each ~~licensed~~approved school shall make a first payment, in the amount of \$500, no later than September 1 prior to the calendar year for which the school is applying for renewal of approval. Each ~~licensed~~approved school shall make a second renewal payment, in the amount determined as provided in subds. 2. through 4. no later than March 1 of the calendar year for which the school is applying for renewal of approval.
- 2.** The department shall levy a second renewal fee based on ~~licensed schools'~~ the approved school's adjusted gross annual revenues and set the fee multiplier for 2-year periods at a time.

SECTION 7. SPS 407.04 (1) (d) is amended to read:

SPS 407.04 (1) (d) Surrender the school's SPS ~~license~~certificate of approval.

SECTION 8. SPS 411.04 (1) is amended to read:

SPS 411.04 (1) Except as provided under s. 440.52 (1) (e) 8., Stats., a school that delivers a distance learning program shall apply for approval upon department forms meeting the requirements of s. SPS 404.03.

SECTION 9. 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)

This Proposed Order of the Department of Safety and Professional Services is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Secretary