

STATE OF WISCONSIN  
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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IN THE MATTER OF RULE-MAKING	:	NOTICE OF TIME PERIOD	:
PROCEEDINGS BEFORE THE	:	FOR COMMENTS FOR THE	:
DEPARTMENT OF SAFETY AND	:	ECONOMIC IMPACT ANALYSIS	:
PROFESSIONAL SERVICES	:		:

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NOTICE IS HEREBY GIVEN of the time period for public comment on the economic impact of this proposed rule of the Department of Safety and Professional Services relating to predetermination of conviction record prior to submitting a full application for licensure, including how this proposed rule may affect businesses, local government units and individuals. The comments will be considered when the Department of Safety and Professional Services prepares the Economic Impact Analysis pursuant to § 227.137. Written comments may be submitted to:

Sharon Henes, Administrative Rules Coordinator  
Division of Policy Development  
Department of Safety and Professional Services  
PO Box 8366  
Madison, WI 53708-8935  
[DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov)

The deadline for submitting economic impact comments is December 12, 2018.

PROPOSED ORDER

An order of the Department of Safety and Professional Services to create SPS 4.035 relating to predetermination of conviction record prior to submitting a full application for licensure.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** s. 111.335 (4) (f), Stats.

**Statutory authority:** s. 111.335 (4) (f) 6., Stats.

**Explanation of agency authority:**

The Department of Safety and Professional Services may promulgate rules defining uniform procedures for making 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.

**Related statute or rule:** s. 452.25, Stats.

**Plain language analysis:**

This rule implements 2017 Act 278. The rule sets out uniform procedures and fees for individuals to receive a predetermination of whether a conviction record will prohibit receiving a credential.

An individual may file an application, pay a fee and submit documentation relating to the conviction record, including police report, criminal complaint, judgment of conviction, compliance with sentencing terms, personal statement and evidence of rehabilitation. The predetermination fee paid is credited towards the credential application fee if the individual applies for the credential within one year of the predetermination decision.

When deciding on a predetermination, the agency will consider the following:

- The severity and nature of the offense.
- The circumstances relative to the offense.
- The age of the individual at the time of the offense.
- The amount of time since the offense occurred.
- Whether the conviction is related to the activities of the profession.
- The individual's actions since the conviction and evidence of rehabilitation.

The individual will be sent notification of the decision no later than 30 days after the agency received the predetermination application. The decision is binding upon the agency if the individual applies for the credential unless there is information which is relevant but was not available at the time of the decision.

**Summary of, and comparison with, existing or proposed federal regulation:** None

**Comparison with rules in adjacent states:**

**Illinois:** Illinois does not have a predetermination process regarding criminal convictions.

**Iowa:** Iowa does not have a predetermination process regarding criminal convictions.

**Michigan:** Michigan does not have a predetermination process regarding criminal convictions.

**Minnesota:** Minnesota does not have a predetermination process regarding criminal convictions.

**Summary of factual data and analytical methodologies:**

The Department reviewed the language of 2017 Act 278, and the current Real Estate Examining Board rules which were promulgated pursuant to s. 452.25, Stats.

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

**Fiscal Estimate and Economic Impact Analysis:**

The department is currently soliciting information and advice from businesses, local government units and individuals in order to prepare the Economic Impact Analysis.

**Effect on small business:**

**Agency contact person:**

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-2377; email at DSPSAdminRules@wisconsin.gov.

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TEXT OF RULE

SECTION 1. SPS 4.035 is created to read:

SPS 4.035 (1) An individual who does not possess a credential may apply to the authority, without submitting a full application, for a determination of whether the individual would be disqualified from obtaining a credential based upon a conviction record by submitting all of the following:

- (a) An application for predetermination.
  - (b) A fee in the amount of \$68.00.
  - (c) Police report or criminal complaint.
  - (d) Judgment of conviction.
  - (e) Verification of compliance or completion with the terms of the sentencing.
  - (f) Personal statement describing the facts that led to each offense and any rehabilitation completed.
- (2) The fee under sub. (1) (b) may be applied to the application fee if the individual applies for a credential within 1 year of the determination.
- (3) The authority shall review the information related to the conviction record and consider all of the following factors in making a determination:
- (a) The severity and nature of the offense.
  - (b) The circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission of the offense and circumstances that may have a bearing on whether the individual might repeat the behavior that was the subject 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) The relationship of the offense to the credentialed practice.

(f) The individual's activities since the offense, including employment, education, participation in treatment, payment of restitution, and any other factor that may be evidence of rehabilitation.

(4) The authority shall send the written notification of the authority's determination whether the conviction record would disqualify the individual from obtaining a credential due to the individual's conviction record no later than 30 days after receiving the application for a determination.

(5) The determination is binding upon the authority if the individual subsequently applies for a credential, unless there is information relevant to the determination that was not available to the authority at the time of the determination.

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(END OF TEXT OF RULE)

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