

STATE REPRESENTATIVE
DEAN KNUDSON

30TH ASSEMBLY DISTRICT

February 6, 2014
Assembly Committee on Housing and Real Estate
Testimony RE: AB 688

Mr. Chairman,

Thank you for holding this hearing, and for giving me the opportunity to testify in favor of AB 688. This measure is a bipartisan overhaul of the way the Real Estate Examining Board issues real estate licenses to those with felonies on their records. Currently, the only way for the department to deny a license to someone with a felony is if their offense is “substantially related” to the practice of their profession. This language is vague and can lead to unnecessary confusion and disputes. AB 688 would change the law so that a person with a felony conviction would have to wait five years after the completion of their sentence, parole, or probation to be eligible for a license.

We are currently in discussions with the Senate about potential changes as to the number of years and when the timeline would begin. We hope to have a solution shortly.

Additionally, AB 688 establishes a pre-application procedure. A similar measure is already on the books in six other states. A person with a criminal record who wants to know if they would be approved for a license can apply for a pre-determination from the REEB. The board will then examine the person’s record and determine whether their application would be approved. That determination is binding upon the board unless new information comes to light.

We have worked with the Department of Safety and Professional Services as well as the Realtors Association in crafting this bill. I again appreciate your holding this hearing, and I hope to have this committee’s support. I am open to any questions you may have.



To: All Legislators

From: Cori Lamont, Director of Regulatory Affairs
Tom Larson, Vice President of Legal and Public Affairs

Date: February 3, 2014

RE: Licensing Felons in Wisconsin as Real Estate Brokers and Salespersons
– SB531/AB688

The Wisconsin REALTORS® Association is recommending the enactment of legislation as to when a convicted felon should be issued a Wisconsin registered timeshare salesperson, real estate broker or salesperson license.

Background

Currently, the Real Estate Examining Board (REEB) has broad discretion to determine when an applicant may obtain a real estate license. The only guidelines that exist relate to individuals who are currently licensed that are convicted of crimes. (See e.g., Wis. Admin. Code § REEB 24.17(1), which allows the REEB to determine whether the circumstances of the crime of which the licensee was convicted are “substantially related to the practice of a real estate broker or salesperson.”) The REEB is statutorily charged with the responsibility to ensure that a licensee is, “safeguard[ing] the interests of the public” (Wis. Stat. § 452.09(1)(e)).

There is nothing in statute or administrative code that provides specific guidelines for the REEB to consider in determining whether to grant a license to an individual with a criminal conviction. However, other Wisconsin licensed professionals participating in the real estate transaction have specific limitations to licensure; e.g., appraisers may not obtain a license if the individual has an arrest or conviction record and mortgage loan originators must wait seven years after a felony conviction involving fraud, dishonesty, breach of trust and money laundering. The intent of this legislation is to provide structure in determining when to grant a license to an individual who has a criminal conviction; specifically a felony conviction.

Currently in Wisconsin

- An individual is not able to obtain a determination from the REEB prior to application as to the likelihood of successfully achieving licensure before investing in the education, examination, license application and any related fees.
- Individuals are required to disclose any criminal convictions at the time of licensure and within 48 hours of conviction if licensed.
- The REEB has complete discretion as to whether or not an applicant with any criminal conviction may obtain a real estate license. There are no published guidelines in administrative code, Wisconsin statute or board policy statement as to connection between licensure and specific criminal convictions.
- The REEB may revoke or suspend a license if it is later determined the individual lied on their application or did not disclose the conviction within the 48 hours.

Other States

- Approximately 13 states have rules or statutes placing certain prohibitions relating to licensure of convicted felons.
- Roughly 23 states require fingerprinting and/or background checks but do not have statutory language prohibiting licensure of convicted felons. However, several of the 23 states provide guidance via administrative rule or established board licensing policies when criminal convictions are discovered during the background check.

Proposed Legislation Summary

- **Requires anyone who has a felony conviction to wait 5 years after serving sentence before being able to receive a real estate license.** Any individual that has been convicted of a felony in Wisconsin or another state is not permitted to obtain a real estate license until five years has elapsed following completion of any applicable period of confinement, or payment of a fine or fulfillment of any supervision. Essentially once the individual regains their right to vote, the five years begins.
- **Establishes criteria for the REEB to consider in granting licenses.** Once the applicant becomes eligible, the applicant may attempt to demonstrate that the applicant meets all the criteria for licensure. The board will be required to consider specific factors in determining if a license should be issued, such as severity or nature of the felony; the period of time that has passed since; circumstances surrounding the crime that would help determine the risk of repetition; relationship of the crime to the licensed practice of real estate; and applicant's activities since the crime under review, such as employment, education, participation in treatment, payment of restitution or other factors that may show current rehabilitation.
- **Creates an opportunity for any individual to ask the board to consider if the applicant will qualify for licensure.** Any individual may ask for the board to make a predetermination of the individual's ability to receive a real estate license due to their criminal conviction. During this time the board is authorized to conduct an investigation which may include a background check and require the individual to provide any necessary information pertaining to the investigation. Additionally, any determination by the board as to criminal convictions is binding upon the board and department if the individual later applies. This decision in perpetuity provides certainty for both the individual and board as to any possible future determination that may be contrary. The proposal notes that the outcome may be different if new information relevant to the determination is presented that was not originally available.
- **Creates a form for license renewal for the licensee to attest to the fact that the individual has not been convicted of a crime since the last renewal or original licensure.** Real estate licensees renew their license every even year. Under this legislation at the time of renewal the individual will attest to the state that they have not been convicted of a crime since their last renewal or initial licensure if it's their first renewal period. If they indicate yes, then the individual must identify the date of conviction and describe the nature and circumstances of the crime. This attestation also acknowledges that the board has the right to conduct an investigation and revoke the license for failing to be accurate and truthful.
- **Provides a broker safe harbor for a negligent hiring claim if the individual hired had a criminal conviction that was issued a license.** If a broker hires a licensee and that individual had a disclosed criminal conviction in their history and was provided a real estate license and the individual commits a crime or a wrongful act, the broker may not be held responsible for a negligent hiring claim as the employer.
- **Provides penalties for individuals who make false statements to the board during application and renewal.** This legislation creates a \$1,000 penalty for any individual that provides false statements to the REEB and clarifies that the REEB may revoke a license relating to failure to pay the \$1,000 forfeiture.