2009 DRAFTING REQUEST

Bill

Received: **10/02/2009**

Received By: **gmalaise**

Wanted: **10/02/2009**

Identical to LRB:

For: **Alberta Darling (608) 266-5830**

By/Representing: **Connie Schulze**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - day care**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Darling@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Background checks for child care providers

Instructions:

Redraft 3533/2 as a /1

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise 10/02/2009	kfollett 10/02/2009		_____ _____			S&L
/1			phenry 10/02/2009	_____ _____	cduerst 10/02/2009	mbarman 10/02/2009	

FE Sent For:

<END>

↳ At Intro.

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/?	gmalaise	lkf 10/2	10/2 ph	10/2 ph			

FE Sent For:

<END>

RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: GMM) (Date: 10 / 2 / 09)

○ ☞ Please transfer the drafting file for

2007 LRB _____ to the drafting file

for **2009 LRB** _____

Done GMB

☞ The final version of the 2007 draft and the final Request Sheet will copied on yellow paper, and returned to the original 2007 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

☞ For research purposes, because the 2007 draft was incorporated into a new 2009 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2009 drafting file. This request form will be inserted into the "guts" of the 2009 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

--OR--

⊗ ☞ Please copy the drafting file for

2009 LRB 3533 / 2 (include the version) and place it in the

drafting file for **2009 LRB** 3597

☞ For research purposes, because the original 2009 draft was incorporated into another 2009 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2009 drafting file. This request form will be inserted into the "guts" of the new 2009 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

☞ The original drafting file will then returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-~~3582/2~~ 3597/1
GMM:kjf:ph

Now!
(No change)

2009 BILL

CPS: Fix request sheet please

Regen

AN ACT ***to renumber*** 49.133 (3), 49.133 (4) and 120.13 (14); ***to renumber and amend*** 49.133 (intro.), 49.133 (1), 49.133 (2) and 49.845 (4); ***to amend*** 20.435 (6) (jm), 48.685 (1) (c) 4., 48.685 (2) (am) (intro.), 48.685 (2) (am) 5., 48.685 (2) (b) 4., 48.685 (2) (bb), 48.685 (2) (bd), 48.685 (2) (bg), 48.685 (2) (bm), 48.685 (3) (a), 48.685 (3) (b), 48.685 (3m), 48.685 (4m) (a) 1., 48.685 (4m) (ad), 48.685 (4m) (b) 1., 48.685 (5) (a), 48.685 (5c) (a), 48.685 (6) (am), 48.685 (6) (b) 2. and 48.685 (8); ***to repeal and recreate*** 48.685 (4m) (ad) and 49.155 (7); and ***to create*** 48.651 (3), 48.685 (1) (c) 3m., 48.685 (2) (ar), 48.685 (2) (b) 2., 48.685 (3) (am), 48.685 (3) (bm), 48.685 (5) (br), 48.715 (4g), 49.133 (1m) (a), 49.133 (1m) (c), 49.133 (1m) (d), 49.133 (2m) (intro.), 49.197 (6), 49.895 (4) (b), (c) and (d), 106.54 (9), 111.322 (2m) (bm) and 120.13 (14) (b) of the statutes; **relating to:** prohibiting a person who has been convicted or adjudicated delinquent for committing certain serious crimes, who is the subject of a pending criminal charge or delinquency petition for committing a serious crime, or who has had

1 entered against him or her a domestic abuse, child abuse, individual-at-risk
2 abuse, or harassment temporary restraining order or injunction in the
3 preceding 15 years from being licensed, certified, or contracted with to provide
4 child care, from being employed or contracted as a caregiver of a child care
5 provider, or from being permitted to reside at a premises where child care is
6 provided; requiring suspected fraudulent activity on the part of a participant
7 in the Wisconsin Works Program, including a person receiving a child care
8 subsidy under that program, to be reported to the district attorney; making an
9 appropriation; and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Children and Families (DCF) may not license a person to operate a day care center; DCF in a county having a population of 500,000 or more, a county department of human services or social services (county department), or an agency contracted by DCF to certify day care providers for purposes of reimbursement under the Wisconsin Works Program (contracted agency) may not certify a day care provider for those purposes; and a school board may not contract with a person to provide a day care program (collectively "child care provider") if the person has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime, as defined under current law, unless the person shows that he or she has been rehabilitated.

Similarly, a child care provider may not employ or contract with a caregiver or permit a nonclient resident to reside at a premises where child care is provided if the caregiver or nonclient resident has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime, as defined under current law, unless the caregiver or nonclient resident shows that he or she has been rehabilitated. Currently, "serious crime" is defined to include certain crimes against life or bodily security and certain crimes against children that are felonies.

This bill prohibits any person who has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing any of the following serious crimes or who is the subject of a pending criminal charge or delinquency petition alleging that the person has committed any of the following serious crimes on or after his or her 12th birthday from being licensed, certified, or contracted with to provide child care, from being employed or contracted as a caregiver of a child care provider, or from being permitted to be a nonclient resident of a premises where child care is provided and prohibits such a person from showing that he or she has been rehabilitated:

1. Any crime against children, other than failure to pay child support or hazing.

2. Felony battery, if the victim is the spouse of the person.

3. First-degree or second-degree intentional or reckless homicide, felony murder, mayhem, felony sexual assault, reckless injury, taking hostages, kidnapping, felony endangering safety by use of a dangerous weapon, disarming a police officer, armed burglary, carjacking, or armed robbery.

4. A misdemeanor involving sexual abuse, child abuse, or domestic abuse, if the person has ever been convicted or adjudicated delinquent for committing any felony.

5. Any drug or alcohol-related felony, felony battery, sexual exploitation by a therapist, abuse of an adult-at-risk, abuse or neglect of a patient, video voyeurism, felony failure to pay child support, or felony hazing, if the person has ever been convicted or adjudicated delinquent for committing any other crime.

6. Any drug or alcohol-related felony, felony battery, sexual exploitation by a therapist, abuse of an adult-at-risk, abuse or neglect of a patient, video voyeurism, felony failure to pay child support, or felony hazing, if the person has never been convicted or adjudicated delinquent for committing any other crime and the person completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by the Department of Corrections (DOC), less than ten years before the date of the background investigation of the person.

7. A misdemeanor involving sexual abuse, child abuse, or domestic abuse, if the person has never been convicted or adjudicated delinquent for committing a felony, but has ever been convicted or adjudicated delinquent for committing any other misdemeanor, and the person completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by the DOC, less than ten years before the date of the background investigation of the person.

8. A misdemeanor involving sexual abuse, child abuse, or domestic abuse, if the person has never been convicted or adjudicated delinquent for committing any other misdemeanor, and the person completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by the DOC, less than five years before the date of the background investigation of the person.

The bill also prohibits a person who has had entered against him or her a domestic abuse, child abuse, individual-at-risk abuse, or harassment temporary restraining order or injunction (TRO or injunction) in the 15 years preceding the background investigation of the person from being licensed, certified, or contracted with to provide child care, from being employed or contracted as a caregiver of a child care provider, or from being permitted to be a nonclient resident of a premises where child care is provided, but permits such a person to show that he or she has been rehabilitated.

Current law requires DCF, a county department, a contracting agency, or a school board, prior to licensing, certifying, or contracting with a child care provider and every four years after that, to conduct a criminal history search of the child care provider, of all nonclient residents of the premises where the child care is provided, and of all persons under 18 years of age who are caregivers of the child care provider and to obtain certain other information with respect to those individuals, specifically: 1) information from the client abuse registry maintained by the

Department of Health Services (DHS); 2) information maintained by the Department of Regulation and Licensing regarding the individual's credentials; 3) information maintained by DCF regarding any substantiated reports of child abuse or neglect against the individual; and 4) information maintained by DHS regarding any denial of a license, certification, or contract to provide child care, of employment as a caregiver of a child care provider, or of permission to reside at a premises where child care is provided. Similarly, current law also requires a child care provider to conduct such a criminal history search and to obtain that information with respect to a caregiver 18 years of age or over prior to employing or contracting with the caregiver and every four years after that.

This bill requires DCF, a county department, a contracting agency, or a school board to conduct that criminal history search and to obtain that information every 90 days after a child care provider is licensed, certified, or contracted with and requires a child care provider to conduct that criminal history search and to obtain that information every 90 days after a caregiver 18 years of age or over is employed or contracted with. In addition, the bill requires DCF, a county department, a contracting agency, or a school board, prior to licensing, certifying, or contracting with a child care provider and every 90 days after that, to obtain information that is contained in the sex offender registry maintained by DOC regarding whether the person has committed a sex offense that is a serious crime and information that is contained in the circuit court automated information system regarding any pending criminal charge or delinquency petition alleging that a child care provider, a nonclient resident of the premises where the child care is provided, or a person under 18 years of age who is a caregiver of the child care provider has committed a serious crime and regarding any TRO or injunction entered against such a provider, nonclient resident, or caregiver, and requires a child care provider to obtain that information with respect to a caregiver 18 years of age or over prior to employing or contracting with the caregiver and every 90 days after that.

Under current law, DCF *may* revoke the license of a person to operate a day care center if the licensee or a person under the supervision of the licensee commits certain actions, including a repeated or substantial violation of a rule or order of DCF or of a condition of licensure or an action that directly threatens the health, safety, or welfare of any child under the care of the licensee. Similarly, under current law, DCF or a county department *may* refuse to pay a child care provider for child care provided under the Wisconsin Works Program if the child care provider, an employee of the child care provider, or a person living on the premises where child care is provided is convicted of a felony or misdemeanor that substantially relates to the care of children, is the subject of a pending charge that substantiality relates to the care of children, or has been determined to have abused or neglected a child.

This bill *requires* all of the following:

1. DCF to revoke the license of a day care center; DCF in a county having a population of 500,000 or more, a county department, or a contracted agency to revoke the certification of a day care provider for purposes of reimbursement under the Wisconsin Works Program; and a school board to rescind the contract of the person to operate a day care program; if the person licensed to operate the day care center,

the person certified as a child care provider, or the person contracting to provide the day care program is convicted of a serious crime or if a caregiver or nonclient resident of the day care center, child care provider, or day care program is convicted or adjudicated delinquent for committing a serious crime on or after his or her 12th birthday. The bill also requires DCF or a county department to refuse to pay a child care provider in those circumstances or if the child care provider has been convicted of a crime involving financial dishonestly beginning on the date of the conviction or delinquency adjudication.

2. DCF to immediately suspend the license of a day care center; DCF in a county having a population of 500,000 or more, a county department, or a contracted agency to immediately suspend the certification of a day care provider for purposes of reimbursement under the Wisconsin Works Program; and a school board to immediately suspend the contract of a person to operate a day care program; if the person licensed to operate the day care center, the person certified as a child care provider, or the person contracting to provide the day care program is the subject of a pending criminal charge alleging that the person has committed a serious crime or if a caregiver or nonclient resident of the day care center, child care provider, or day care program is the subject of a pending charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday. The bill also requires DCF or a county department to immediately suspend payment to a child care provider for any child care provided under the Wisconsin Works Program in those circumstances or if the child care provider is the subject of a pending criminal charge alleging that he or she has committed a crime involving financial dishonesty until DCF or the county department obtains information regarding the final disposition of the charge or delinquency proceeding indicating that the person is not ineligible to receive such a payment.

3. DCF to investigate the circumstances giving rise to a TRO or injunction entered against a day care center; DCF in a county having a population of 500,000 or more, a county department, or a contracted agency to investigate the circumstances giving rise to a TRO or injunction entered against a day care provider who is certified for purposes of reimbursement under the Wisconsin Works Program; and a school board to investigate the circumstances giving rise to a TRO or injunction entered against a person contracted to operate a day care program. DCF, the county department, the agency, or the school board may then suspend or revoke the license, certification, or contract, depending on the gravity of those circumstances. DCF or a county department may also suspend or discontinue payment to a child care provider for any child care provided under the Wisconsin Works Program in those circumstances, depending on the gravity of those circumstances.

Finally, the bill requires any employee of DCF, DHS, a county, or a tribal governing body who reasonably suspects fraudulent activity on the part of a participant in the Wisconsin Works Program, including a person receiving a child care subsidy under that program, to immediately report the facts and circumstances contributing to that suspicion to the district attorney, who must keep the identity of the reporter confidential until the district attorney determines whether the report merits further investigation. If the district attorney conducts a full investigation, the

district attorney must keep the identity of the reporter confidential if it is reasonably possible to do so. Any person who fails to report as required under the bill may be fined $1,000 or imprisoned not more than six months or both. Any person who participates in good faith in making a report as required under the bill or in imitating, participating in, or testifying in, any action or proceeding in which such fraudulent activity is alleged is immune from any liability, civil or criminal, that results by reason of that action. The bill also prohibits DCF, DHS, a county, a tribal governing body, or an employee of DCF, DHS, a county, or a tribal governing body from taking disciplinary action against, or threatening to take disciplinary action against, any person because the person in good faith reported as required under the bill or initiated, participated in, or testified in, any action or proceeding in which such fraudulent activity was alleged or because DCF, DHS, the county, the tribal governing body, or the employee believes that the person reported in good faith as required under the bill or initiated, participated in, or testified in, such an action or proceeding.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.435 (6) (jm) of the statutes, as affected by 2009 Wisconsin Act
2 28, is amended to read:

3 20.435 **(6)** (jm) *Licensing and support services.* The amounts in the schedule
4 for the purposes specified in ss. 48.685 (2) (am), (ar), and (b) 1., (3) (a), (am), and (b),
5 and (5) (a), 49.45 (47), 50.02 (2), 50.025, 50.031, 50.065 (2) (am) and (b) 1., (3) (a) and
6 (b), and (5), 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981,
7 and 146.40 (4r) (b) and (er), and subch. IV of ch. 50 and to conduct health facilities
8 plan and rule development activities, for accrediting nursing homes, convalescent
9 homes, and homes for the aged, to conduct capital construction and remodeling plan
10 reviews under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing
11 or certifying, and approving facilities, issuing permits, and providing technical
12 assistance, that are not specified under any other paragraph in this subsection. All
13 moneys received under ss. 48.685 (8), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025,

1 50.031 (6), 50.065 (8), 50.13, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.93
2 (1) (c), and 50.981, all moneys received from fees for the costs of inspecting, licensing
3 or certifying, and approving facilities, issuing permits, and providing technical
4 assistance, that are not specified under any other paragraph in this subsection, and
5 all moneys received under s. 50.135 (2) shall be credited to this appropriation
6 account.

7 **SECTION 2.** 48.651 (3) of the statutes is created to read:

8 48.651 **(3)** (a) If a day care provider certified under sub. (1) is convicted of a
9 serious crime, as defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s. 48.685
10 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the day care
11 provider is convicted or adjudicated delinquent for committing a serious crime on or
12 after his or her 12th birthday, the department in a county having a population of
13 500,000 or more, a county department, or an agency contracted with under sub. (2)
14 shall revoke the certification of the day care provider immediately upon providing
15 written notice of revocation and the grounds for revocation and an explanation of the
16 process for appealing the revocation.

17 (b) If a day care provider certified under sub. (1) is the subject of a pending
18 criminal charge alleging that the person has committed a serious crime, as defined
19 in s. 48.685 (1) (c) 3m., or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient
20 resident, as defined in s. 48.685 (1) (bm), of the day care provider is the subject of a
21 pending criminal charge or delinquency petition alleging that the person has
22 committed a serious crime on or after his or her 12th birthday, the department in a
23 county having a population of 500,000 or more, a county department, or an agency
24 contracted with under sub. (2) shall immediately suspend the certification of the day
25 care provider until the department, county department, or agency obtains

information regarding the final disposition of the charge or delinquency petition indicating that the person is not ineligible to be certified under sub. (1).

(c) If a day care provider certified under sub. (1) or a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the day care provider has entered against him or her a temporary restraining order or injunction under s. 813.12, 813.122, 813.123, 813.125, 813.127, or 813.128, the department in a county having a population of 500,000 or more, a county department, or an agency contracted with under sub. (2) shall investigate the circumstances giving rise to the temporary restraining order or injunction and may suspend or revoke the certification of the day care provider, depending on the gravity of those circumstances, as determined by the department, county department, or agency.

SECTION 3. 48.685 (1) (c) 3m. of the statutes is created to read:

48.685 **(1)** (c) 3m. For purposes of licensing a person to operate a day care center under s. 48.65, certifying a day care provider under s. 48.651, or contracting with a person under s. 120.13 (14) to operate a day care center, or of permitting a person to be a caregiver or nonclient resident of such a day care center or day care provider, any violation listed in subds. 1. to 3. or sub. (5) (br) 1. to 8.

SECTION 4. 48.685 (1) (c) 4. of the statutes is amended to read:

48.685 **(1)** (c) 4. A violation of the law of any other state or United States jurisdiction that would be a violation listed in subd. 1., 2., ~~or~~, 3., or 3m. if committed in this state.

SECTION 5. 48.685 (2) (am) (intro.) of the statutes is amended to read:

48.685 **(2)** (am) (intro.) The department, a county department, an agency contracted with under s. 48.651 (2), a child welfare agency, or a school board shall

1 obtain all of the following with respect to a caregiver specified in sub. (1) (ag) 1. b.,
2 a nonclient resident of an entity, and a person under 18 years of age, but not under
3 12 years of age, who is a caregiver of a day care center that is licensed under s. 48.65
4 or established or contracted for under s. 120.13 (14) or of a day care provider that is
5 certified under s. 48.651:

6 **SECTION 6.** 48.685 (2) (am) 5. of the statutes is amended to read:

7 48.685 **(2)** (am) 5. Information maintained by the department of health services
8 under this section and under ss. 48.651 (2m), 48.75 (1m), and 120.13 (14) regarding
9 any denial to the person of a license, continuation or renewal of a license,
10 certification, or a contract to operate an entity for a reason specified in sub. (4m) (a)
11 1. to 5. and regarding any denial to the person of employment at, a contract with, or
12 permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the
13 information obtained under this subdivision indicates that the person has been
14 denied a license, continuation or renewal of a license, certification, a contract,
15 employment, or permission to reside as described in this subdivision, the
16 department, a county department, <u>an agency contracted with under s. 48.651 (2),</u> a
17 child welfare agency, or a school board need not obtain the information specified in
18 subds. 1. to 4.

19 **SECTION 7.** 48.685 (2) (ar) of the statutes is created to read:

20 48.685 **(2)** (ar) In addition to obtaining the information specified in par. (am)
21 with respect to a person who has, or is seeking, a license to operate a day care center
22 under s. 48.65, certification as a day care provider under s. 48.651, or a contract
23 under s. 120.13 (14) to operate a day care center, a nonclient resident of such an
24 entity, or a person under 18 years of age, but not under 12 years of age, who is a
25 caregiver of such an entity, the department, a county department, an agency

contracted with under s. 48.651 (2), or a school board shall obtain information that is contained in the sex offender registry under s. 301.45 regarding whether the person has committed a sex offense that is a serious crime and information that is contained in the circuit court automated information system under s. 758.19 (4) regarding any pending criminal charge or delinquency petition alleging that the person has committed a serious crime and any temporary restraining order or injunction under s. 813.12, 813.122, 813.123, 813.125, or 813.127 entered against the person.

SECTION 8. 48.685 (2) (b) 2. of the statutes is created to read:

48.685 **(2)** (b) 2. In addition to obtaining the information specified in subd. 1. with respect to a caregiver specified in sub. (1) (ag) 1. a. of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651, the day care center or day care provider shall obtain information that is contained in the sex offender registry under s. 301.45 regarding whether the person has committed a sex offense that is a serious crime and information that is contained in the circuit court automated information system under s. 758.19 (4) regarding any pending criminal charge alleging that the person has committed a serious crime and any temporary restraining order or injunction under s. 813.12, 813.122, 813.123, 813.125, or 813.127 entered against the person.

SECTION 9. 48.685 (2) (b) 4. of the statutes is amended to read:

48.685 **(2)** (b) 4. ~~Subdivision 1. does~~ Subdivisions 1. and 2. do not apply with respect to a nonclient resident or person under 18 years of age, but not under 12 years of age, who is a caregiver ~~or nonclient resident~~ of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care

provider that is certified under s. 48.651 and with respect to whom the department, a county department, an agency contracted with under s. 48.651 (2), or a school board is required under par. (am) (intro.) to obtain the information specified in par. (am) 1. to 5.

SECTION 10. 48.685 (2) (bb) of the statutes is amended to read:

48.685 **(2)** (bb) If information obtained under par. (am) or (b) 1. indicates a charge of a serious crime, but does not completely and clearly indicate the final disposition of the charge, the department, county department, agency contracted with under s. 48.651 (2), child welfare agency, school board, or entity shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge. If a background information form under sub. (6) (a) or (am) indicates a charge or a conviction of a serious crime, but information obtained under par. (am) or (b) 1. does not indicate such a charge or conviction, the department, county department, agency contracted with under s. 48.651 (2), child welfare agency, school board, or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint. If information obtained under par. (am) or (b) 1., a background information form under sub. (6) (a) or (am), or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01, or 947.013 obtained not more than 5 years before the date on which that information was obtained, the department, county department, agency contracted with under s. 48.651 (2), child welfare agency, school board, or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

SECTION 11. 48.685 (2) (bd) of the statutes is amended to read:

48.685 **(2)** (bd) Notwithstanding pars. (am) and (b) 1., the department, a county department, an agency contracted with under s. 48.651 (2), a child welfare agency, or a school board is not required to obtain the information specified in par. (am) 1. to 5., and an entity is not required to obtain the information specified in par. (b) 1. a. to e., with respect to a person under 18 years of age whose background information form under sub. (6) (am) indicates that the person is not ineligible to be employed, contracted with, or permitted to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. and with respect to whom the department, county department, contracted agency, child welfare agency, school board, or entity otherwise has no reason to believe that the person is ineligible to be employed, contracted with, or permitted to reside at an entity for any of those reasons. This paragraph does not preclude the department, a county department, an agency contracted with under s. 48.651 (2), a child welfare agency, or a school board from obtaining, at its discretion, the information specified in par. (am) 1. to 5. with respect to a person described in this paragraph who is a nonclient resident or a prospective nonclient resident of an entity.

SECTION 12. 48.685 (2) (bg) of the statutes is amended to read:

48.685 **(2)** (bg) If an entity employs or contracts with a caregiver for whom, within the last ~~4 years~~ 90 days, the information required under par. (b) 1. a. to c. and e. has already been obtained by another entity, the entity may obtain that information from that other entity, which shall provide the information, if possible, to the requesting entity. If an entity cannot obtain the information required under par. (b) 1. a. to c. and e. from another entity or if an entity has reasonable grounds to believe that any information obtained from another entity is no longer accurate, the entity shall obtain that information from the sources specified in par. (b) 1. a. to c. and e.

1 **SECTION 13.** 48.685 (2) (bm) of the statutes is amended to read:

2 48.685 **(2)** (bm) If the person who is the subject of the search under par. (am),
3 (ar), or (b) 1. is not a resident of this state, or if at any time within the 3 years
4 preceding the date of the search that person has not been a resident of this state, or
5 if the department, county department, agency contracted with under s. 48.651 (2),
6 child welfare agency, school board, or entity determines that the person's
7 employment, licensing, or state court records provide a reasonable basis for further
8 investigation, the department, county department, contracted agency, child welfare
9 agency, school board, or entity shall make a good faith effort to obtain from any state
10 or other United States jurisdiction in which the person is a resident or was a resident
11 within the 3 years preceding the date of the search information that is equivalent to
12 the information specified in par. (am) 1., (ar), or (b) 1. a. The department, county
13 department, contracted agency, child welfare agency, school board, or entity may
14 require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete
15 set of the person's fingerprints. The department of justice may provide for the
16 submission of the fingerprint cards to the federal bureau of investigation for the
17 purposes of verifying the identity of the person fingerprinted and obtaining records
18 of his or her criminal arrests and convictions.

19 **SECTION 14.** 48.685 (3) (a) of the statutes is amended to read:

20 48.685 **(3)** (a) ~~Every~~ Subject to par. (am), every 4 years or at any time within
21 that period that the department, a county department, an agency contracted with
22 under s. 48.651 (2), a child welfare agency, or a school board considers appropriate,
23 the department, county department, contracted agency, child welfare agency, or
24 school board shall request the information specified in sub. (2) (am) 1. to 5. for all
25 caregivers specified in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to

operate an entity~~,~~ and for all persons who are nonclient residents of such a caregiver~~, and for all persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651~~.

SECTION 15. 48.685 (3) (am) of the statutes is created to read:

48.685 **(3)** (am) Every 90 days or at any time within that period that the department, a county department, an agency contracted with under s. 48.651 (2), or a school board considers appropriate, the department, county department, contracted agency, or school board shall request the information specified in sub. (2) (am) 1. and (ar) for all caregivers specified in sub. (1) (ag) 1. b. who are licensed under s. 48.65 to operate a day care center, certified as a day care provider under s. 48.651, or contracted under s. 120.13 (14) to operate a day care center for all persons who are nonclient residents of such a caregiver, and for all persons under 18 years of age, but not under 12 years of age, who are caregivers specified in sub. (1) (ag) 1. a. of such a caregiver.

SECTION 16. 48.685 (3) (b) of the statutes is amended to read:

48.685 **(3)** (b) ~~Every~~ Subject to par. (bm), every 4 years or at any time within that period that an entity considers appropriate, the entity shall request the information specified in sub. (2) (b) 1. a. to e. for all persons who are caregivers specified in sub. (1) (ag) 1. a. of the entity ~~other than persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651~~.

SECTION 17. 48.685 (3) (bm) of the statutes is created to read:

48.685 **(3)** (bm) Every 90 days or at any time within that period that a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or a day care provider that is certified under s. 48.651 considers appropriate, the day care center or day care provider shall request the information specified in sub. (2) (b) 1. a. to e. and 2. for all persons who are caregivers specified in sub. (1) (ag) 1. a. of the day care center or day care provider other than persons under 18 years of age, but not under 12 years of age.

SECTION 18. 48.685 (3m) of the statutes is amended to read:

48.685 **(3m)** Notwithstanding subs. (2) (b) 1. and (3) (b), if the department, a county department, an agency contracted with under s. 48.651 (2), a child welfare agency, or a school board has obtained the information required under sub. (2) (am) or (3) (a) or (am) with respect to a person who is a caregiver specified in sub. (1) (ag) 1. b. and that person is also an employee, contractor, or nonclient resident of an entity, the entity is not required to obtain the information specified in sub. (2) (b) 1. or (3) (b) with respect to that person.

SECTION 19. 48.685 (4m) (a) 1. of the statutes is amended to read:

48.685 **(4m)** (a) 1. That the person has been convicted of a serious crime or, if the person is an applicant for issuance or continuation of a license to operate a day care center or for initial certification under s. 48.651 or for renewal of that certification or if the person is proposing to contract with a school board under s. 120.13 (14) or to renew a contract under that subsection, that the person has been convicted of a serious crime or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime; that the person is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday; or that the person has had a

temporary restraining order or injunction under s. 813.12, 813.122, 813.123, 813.125, 813.127, or 813.128 entered against him or her not more than 15 years before the date of the investigation under sub. (2) (ar).

SECTION 20. 48.685 (4m) (ad) of the statutes, as affected by 2009 Wisconsin Act 28, section 1073d, is amended to read:

48.685 **(4m)** (ad) The department, a county department, or a child welfare agency may license a foster home or treatment foster home under s. 48.62~~,~~; the department may license a day care center under s. 48.65; the department in a county having a population of 500,000 or more, a county department, or an agency contracted with under s. 48.651 (2) may certify a day care provider under s. 48.651~~,~~; and a school board may contract with a person under s. 120.13 (14), conditioned on the receipt of the information specified in sub. (2) (am) and (ar) indicating that the person is not ineligible to be licensed, certified, or contracted with for a reason specified in par. (a) 1. to 5.

SECTION 21. 48.685 (4m) (ad) of the statutes, as affected by 2009 Wisconsin Act 28, section 1074d, and 2009 Wisconsin Act .... (this act), is repealed and recreated to read:

48.685 **(4m)** (ad) The department, a county department, or a child welfare agency may license a foster home under s. 48.62; the department may license a day care center under s. 48.65; the department in a county having a population of 500,000 or more, a county department, or an agency contracted with under s. 48.651 (2) may certify a day care provider under s. 48.651; and a school board may contract with a person under s. 120.13 (14), conditioned on the receipt of the information specified in sub. (2) (am) and (ar) indicating that the person is not ineligible to be licensed, certified, or contracted with for a reason specified in par. (a) 1. to 5.

1 **SECTION 22.** 48.685 (4m) (b) 1. of the statutes is amended to read:

2 48.685 **(4m)** (b) 1. That the person has been convicted of a serious crime or, if
3 the person is a caregiver or nonclient resident of a day care center that is licensed
4 under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care
5 provider that is certified under s. 48.651, that the person has been convicted of a
6 serious crime or adjudicated delinquent on or after his or her 12th birthday for
7 committing a serious crime; that the person is the subject of a pending criminal
8 charge or delinquency petition alleging that the person has committed a serious
9 crime on or after his or her 12th birthday; or that the person has had a temporary
10 restraining order or injunction under s. 813.12, 813.122, 813.123, 813.125, 813.127,
11 or 813.128 entered against him or her not more than 15 years before the date of the
12 investigation under sub. (2) (b) 2.

13 **SECTION 23.** 48.685 (5) (a) of the statutes, as affected by 2009 Wisconsin Act 28,
14 is amended to read:

15 48.685 **(5)** (a) Subject to ~~par.~~ pars. (bm) and (br), the department may license
16 to operate an entity, the department in a county having a population of 500,000 or
17 more, a county department, or an agency contracted with under s. 48.651 (2) may
18 certify under s. 48.651, a county department or a child welfare agency may license
19 under s. 48.62, and a school board may contract with under s. 120.13 (14) a person
20 who otherwise may not be licensed, certified, or contracted with for a reason specified
21 in sub. (4m) (a) 1. to 5., and an entity may employ, contract with, or permit to reside
22 at the entity a person who otherwise may not be employed, contracted with, or
23 permitted to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the
24 person demonstrates to the department, the county department, the contracted
25 agency, the child welfare agency, or the school board or, in the case of an entity that

is located within the boundaries of a reservation, to the person or body designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and in accordance with procedures established by the department by rule or by the tribe that he or she has been rehabilitated.

SECTION 24. 48.685 (5) (br) of the statutes is created to read:

48.685 **(5)** (br) For purposes of licensing a person to operate a day care center under s. 48.65, certifying a day care provider under s. 48.651, or contracting with a person under s. 120.13 (14) to operate a day care center or of permitting a person to be a nonclient resident or caregiver specified in sub. (1) (ag) 1. a. of a day care center or day care provider, no person who has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing any of the following offenses or who is the subject of a pending charge or delinquency petition alleging that the person has committed any of the following offenses on or after his or her 12th birthday may be permitted to demonstrate that he or she has been rehabilitated:

1. An offense under ch. 948 that is a felony, other than a violation of s. 948.22 (2) or 948.51 (2).

2. A violation of s. 940.19 (3), 1999 stats., or of s. 940.19 (2), (4), (5), or (6) or 940.20 (1) or (1m), if the victim is the spouse of the person.

3. A violation of s. 943.23 (1m) or (1r), 1999 stats., or of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21, 940.225 (1), (2), or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.10 (2), 943.23 (1g), or 943.32 (2).

4. A misdemeanor involving sexual abuse, child abuse, or domestic abuse, if the person has ever been convicted or adjudicated delinquent for committing any felony.

5. A violation of s. 940.19 (3), 1999 stats., or of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.12, 940.19 (2), (4), (5), or (6),

940.20, 940.203, 940.205, 940.207, 940.22 (2) or (3), 940.25, 940.285 (2), 940.295, 942.09 (2), or 948.22 (2), a violation of s. 948.51 (2) that is a felony under s. 948.51 (3) (b) or (c), a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under s. 346.65 (2) (am) 5., 6., or 7., or (f), (2j) (d), or (3m), or an offense under ch. 961 that is a felony, if the person has ever been convicted or adjudicated delinquent for any other crime.

6. A violation listed in subd. 5., if the person has never been convicted or adjudicated delinquent for committing any other crime and the person completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by the department of corrections, less than 10 years before the date of the investigation under sub. (2) (am) or (b) 1.

7. A misdemeanor involving sexual abuse, child abuse, or domestic abuse, if the person has never been convicted or adjudicated delinquent for committing a felony, but has ever been convicted or adjudicated delinquent for committing any other misdemeanor, and the person completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by the department of corrections, less than 10 years before the date of the investigation under sub. (2) (am) or (b) 1.

8. A misdemeanor involving sexual abuse, child abuse, or domestic abuse, if the person has never been convicted or adjudicated delinquent for committing any other misdemeanor and the person completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by the department of corrections, less than 5 years before the date of the investigation under sub. (2) (am) or (b) 1.

SECTION 25. 48.685 (5c) (a) of the statutes is amended to read:

48.685 **(5c)** (a) Any person who is permitted but fails under sub. (5) (a) to demonstrate to the department, an agency contracted with under s. 48.651 (2), or a

1 child welfare agency that he or she has been rehabilitated may appeal to the
2 secretary or his or her designee. Any person who is adversely affected by a decision
3 of the secretary or his or her designee under this paragraph has a right to a contested
4 case hearing under ch. 227.

5 **SECTION 26.** 48.685 (6) (am) of the statutes is amended to read:

6 48.685 **(6)** (am) ~~Every~~ Except as provided in this paragraph, every 4 years an
7 entity shall require all of its caregivers and nonclient residents to complete a
8 background information form that is provided to the entity by the department. Every
9 90 days a day care center that is licensed under s. 48.65 or established or contracted
10 with under s. 120.13 (14) or a day care provider that is certified under s. 48.651 shall
11 require all of its caregivers and nonclient residents to complete a background
12 information form that is provided to the day care center or day care provider by the
13 department.

14 **SECTION 27.** 48.685 (6) (b) 2. of the statutes is amended to read:

15 48.685 **(6)** (b) 2. For caregivers who are licensed or certified by a county
16 department or an agency contracted with under s. 48.651 (2), for persons who are
17 nonclient residents of an entity that is licensed or certified by a county department
18 or an agency contracted with under s. 48.651 (2), and for other persons specified by
19 the department by rule, the entity shall send the background information form to the
20 county department or contracted agency.

21 **SECTION 28.** 48.685 (8) of the statutes is amended to read:

22 48.685 **(8)** The department, the department of health services, a county
23 department, an agency contracted with under s. 48.651 (2), a child welfare agency,
24 or a school board may charge a fee for obtaining the information required under sub.
25 (2) (am), (ar), or (3) (a) or (am) or for providing information to an entity to enable the

1 entity to comply with sub. (2) (b) 1. or (3) (b). The fee may not exceed the reasonable
2 cost of obtaining the information. No fee may be charged to a nurse aide, as defined
3 in s. 146.40 (1) (d), for obtaining or maintaining information if to do so would be
4 inconsistent with federal law.

5 **SECTION 29.** 48.715 (4g) of the statutes is created to read:

6 48.715 **(4g)** (a) If a person who has been issued a license under s. 48.66 (1) (a)
7 or a probationary license under s. 48.69 to operate a day care center is convicted of
8 a serious crime, as defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s.
9 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the day
10 care center is convicted or adjudicated delinquent for committing a serious crime on
11 or after his or her 12th birthday, the department shall revoke the license of the day
12 care center immediately upon providing written notice of revocation and the grounds
13 for revocation and an explanation of the process for appealing the revocation.

14 (b) If a person who has been issued a license under s. 48.66 (1) (a) or a
15 probationary license under s. 48.69 to operate a day care center is the subject of a
16 pending criminal charge alleging that the person has committed a serious crime, as
17 defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or
18 a nonclient resident, as defined in s. 48.685 (1) (bm), of the day care center is the
19 subject of a pending criminal charge or delinquency petition alleging that the person
20 has committed a serious crime on or after his or her 12th birthday, the department
21 shall immediately suspend the license of the day care center until the department
22 obtains information regarding the final disposition of the charge or delinquency
23 petition indicating that the person is not ineligible to be licensed to operate a day care
24 center.

(c) If a person who has been issued a license under s. 48.66 (1) (a) or a probationary license under s. 48.69 to operate a day care center or a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the day care center has entered against him or her a temporary restraining order or injunction under s. 813.12, 813.122, 813.123, 813.125, 813.127, or 813.128, the department shall investigate the circumstances giving rise to the temporary restraining order or injunction and may suspend or revoke the license of the day care center, depending on the gravity of those circumstances, as determined by the department.

SECTION 30. 49.133 (intro.) of the statutes is renumbered 49.133 (1m) (b) and amended to read:

49.133 **(1m)** (b) ~~The~~ If a child care provider is convicted of a serious crime, as defined in s. 48.685 (1) (c) 3m., or a crime involving financial dishonesty, or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider is convicted or adjudicated delinquent for committing a serious crime on or after his or her 12th birthday, the department or a county department under s. 46.215, 46.22, or 46.23 ~~may~~ shall refuse to pay ~~a~~ the child care provider for any child care provided under s. 49.132, 1995 stats., or any other program ~~if any of the following applies to the child care provider, employee or person living on the premises where child care is provided:~~ beginning on the date of the conviction or delinquency adjudication.

SECTION 31. 49.133 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is renumbered 49.133 (2m) (a) and amended to read:

49.133 **(2m)** (a) The person has been convicted of ~~a felony or misdemeanor that~~ or adjudicated delinquent on or after his or her 12th birthday for an offense that is

not a serious crime, as defined in s. 48.685 (1) (c) 3m., but the department ~~or~~, county department under s. 46.215, 46.22, or 46.23, agency contracted with under s. 48.651 (2), or school board determines under s. 48.685 (5m) that the offense substantially relates to the care of children or the department or county department determines that the offense substantially relates to the operation of a business.

SECTION 32. 49.133 (1m) (a) of the statutes is created to read:

49.133 **(1m)** (a) In this subsection, "crime involving financial dishonesty" means an offense under subch. III or IV of ch. 943.

SECTION 33. 49.133 (1m) (c) of the statutes is created to read:

49.133 **(1m)** (c) If a child care provider is the subject of a pending criminal charge alleging that the person has committed a serious crime, as defined in s. 48.685 (1) (c) 3m., or a crime involving financial dishonesty or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday, the department or county department under s. 46.215, 46.22, or 46.23 shall immediately suspend payment to the child care provider for any child care provided under s. 49.132, 1995 stats., or any other program until the department obtains information regarding the final disposition of the charge or delinquency petition indicating that the person is not ineligible to receive such a payment.

SECTION 34. 49.133 (1m) (d) of the statutes is created to read:

49.133 **(1m)** (d) If a child care provider or a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider has entered against him or her a temporary restraining order or injunction under s. 813.12, 813.122, 813.123, 813.125, 813.127, or 813.128, the department or

county department under s. 46.215, 46.22, or 46.23 shall investigate the circumstances giving rise to the temporary restraining order or injunction and may suspend or discontinue payments to the child care provider for any child care provided under s. 49.132, 1995 stats., or any other program, depending on the gravity of those circumstances, as determined by the department or county department.

SECTION 35. 49.133 (2) of the statutes is renumbered 49.133 (2m) (b) and amended to read:

49.133 **(2m)** (b) The person is a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), and is the subject of a pending criminal charge that the department ~~or~~, county department under s. 46.215, 46.22, or 46.23, agency contracted with under s. 48.651 (2), or school board determines substantially relates to the care of children.

SECTION 36. 49.133 (2m) (intro.) of the statutes is created to read:

49.133 **(2m)** (intro.) The department or a county department under s. 46.215, 46.22, or 46.23 may refuse to pay a child care provider for child care provided under s. 49.132, 1995 stats., or any other program if any of the following applies to the child care provider or to a caregiver specified in s. 48.685 (1) (ag) 1. a. or nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider:

SECTION 37. 49.133 (3) of the statutes is renumbered 49.133 (2m) (c).

SECTION 38. 49.133 (4) of the statutes, as created by 2009 Wisconsin Act 28, is renumbered 49.133 (2m) (c).

SECTION 39. 49.155 (7) of the statutes, as affected by 2009 Wisconsin Act 28, is repealed and recreated to read:

1 49.155 **(7)** REFUSAL TO PAY CHILD CARE PROVIDERS. (a) 1. In this paragraph,
2 "crime involving financial dishonestly" means an offense under subch. III or IV of ch.
3 943.

4 2. If a child care provider is convicted of a serious crime, as defined in s. 48.685
5 (1) (c) 3m., or a crime involving financial dishonesty, or if a caregiver specified in s.
6 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the child
7 care provider is convicted or adjudicated delinquent for committing a serious crime
8 on or after his or her 12th birthday, the department or the county department under
9 s. 46.215, 46.22, or 46.23 shall refuse to pay the child care provider for any child care
10 provided under this section beginning on the date of the conviction or delinquency
11 adjudication.

12 3. If a child care provider is the subject of a pending criminal charge alleging
13 that the person has committed a serious crime, as defined in s. 48.685 (1) (c) 3m., or
14 a crime involving financial dishonesty or if a caregiver specified in s. 48.685 (1) (ag)
15 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider
16 is the subject of a pending criminal charge or delinquency petition alleging that the
17 person has committed a serious crime on or after his or her 12th birthday, the
18 department or the county department under s. 46.215, 46.22, or 46.23 shall
19 immediately suspend payment to the child care provider for any child care provided
20 under this section until the department obtains information regarding the final
21 disposition of the charge or delinquency petition indicating that the person is not
22 ineligible to receive such a payment.

23 4. If a child care provider or a caregiver specified in s. 48.685 (1) (ag) 1. a. or
24 a nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider has
25 entered against him or her a temporary restraining order or injunction under s.

813.12, 813.122, 813.123, 813.125, 813.127, or 813.128, the department or county department under s. 46.215, 46.22, or 46.23 shall investigate the circumstances giving rise to the temporary restraining order or injunction and may suspend or discontinue payments to the child care provider for any child care provided under this section, depending on the gravity of those circumstances, as determined by the department or county department.

(b) The department or the county department under s. 46.215, 46.22, or 46.23 may refuse to pay a child care provider for child care provided under this section if any of the following applies to the child care provider or to a caregiver specified in s. 48.685 (1) (ag) 1. a. or nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider:

1. The person has been convicted of or adjudicated delinquent on or after his or her 12th birthday for committing an offense that is not a serious crime, as defined in s. 48.685 (1) (c) 3m., but the department, county department, agency contracted with under s. 48.651 (2), or school board determines under s. 48.685 (5m) that the offense substantially relates to the care of children or the department or county department determines that the offense substantially relates to the operation of a business.

2. The person is a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), and is the subject of a pending criminal charge that the department, county department, agency contracted with under s. 48.651 (2), or school board determines substantially relates to the care of children.

3. The person has been determined under s. 48.981 to have abused or neglected a child.

1 4. The department or county department reasonably suspects that the person
2 has violated any provision under the program under this section or any rule
3 promulgated under this section.

4 **SECTION 40.** 49.197 (6) of the statutes is created to read:

5 49.197 **(6)** REPORTING TO LAW ENFORCEMENT AUTHORITIES. (a) If any employee
6 of the department, a county, or a tribal governing body reasonably suspects
7 fraudulent activity as described in sub. (1m) or (2) (b), the employee shall
8 immediately report the facts and circumstances contributing to that suspicion to the
9 district attorney. The district attorney shall keep the identity of the reporter
10 confidential until the district attorney determines that the report merits further
11 investigation. If the district attorney conducts a full investigation, the district
12 attorney shall keep the identity of the reporter confidential if it is reasonably possible
13 to do so. Any person who fails to report as required in this paragraph may be fined
14 not more than $1,000 or imprisoned not more than 6 months or both.

15 (b) Any person participating in good faith in the making of a report under par.
16 (a) or in initiating, participating in, or testifying in, any action or proceeding in which
17 fraudulent activity as described in sub. (1m) or (2) (b) is alleged shall have immunity
18 from any liability, civil or criminal, that results by reason of the action. For the
19 purpose of any proceeding, civil or criminal, the good faith of any person reporting
20 under par. (a) shall be presumed.

21 (c) The department, a county, a tribal governing body, or an employee of the
22 department, a county, or a tribal governing body may not take disciplinary action
23 against, or threaten to take disciplinary action against, any person because the
24 person in good faith reported any information under par. (a) or initiated, participated
25 in, or testified in, any action or proceeding in which fraudulent activity described in

1 sub. (1m) or (2) (b) was alleged or because the department, county, tribal governing
2 body, or employee believes that the person in good faith reported any information
3 under par. (a) or initiated, participated in, or testified in, such an action or
4 proceeding.

5 (d) Any employee of the department, a county, or a tribal governing body who
6 is subjected to disciplinary action, or who is threatened with disciplinary action, in
7 violation of par. (c) may file a complaint with the department of workforce
8 development under s. 106.54 (9). If that department finds that a violation of par. (c)
9 has been committed, that department may take such action under s. 111.39 as will
10 effectuate the purpose of this section. Section 111.322 (2m) applies to a disciplinary
11 action arising in connection with any proceeding under this paragraph.

12 **SECTION 41.** 49.845 (4) of the statutes is renumbered 49.845 (4) (a) and
13 amended to read:

14 49.845 **(4)** (a) Notwithstanding s. 49.197 (1m) and (3), the department of
15 children and families may contract with the department of health services to
16 investigate suspected fraudulent activity on the part of recipients of aid to families
17 with dependent children under s. 49.19 and participants in Wisconsin Works under
18 ss. 49.141 to 49.161 and to conduct activities to reduce payment errors in Wisconsin
19 Works under ss. 49.141 to 49.161, as provided in this section. <u>If any employee of the</u>
20 <u>department of health services reasonably suspects fraudulent activity as described</u>
21 <u>in this paragraph, the employee shall immediately report the facts and</u>
22 <u>circumstances contributing to that suspicion to the district attorney. The district</u>
23 <u>attorney shall keep the identity of the reporter confidential until the district attorney</u>
24 <u>determines that the report merits further investigation. If the district attorney</u>
25 <u>conducts a full investigation, the district attorney shall keep the identity of the</u>

1 reporter confidential if it is reasonably possible to do so. Any person who fails to
2 report as required in this paragraph may be fined not more than $1,000 or
3 imprisoned not more than 6 months or both.

4 **SECTION 42.** 49.895 (4) (b), (c) and (d) of the statutes are created to read:

5 49.895 **(4)** (b) Any person participating in good faith in the making of a report
6 under par. (a) or in initiating, participating in, or testifying in, any action or
7 proceeding in which fraudulent activity as described in par. (a) is alleged shall have
8 immunity from any liability, civil or criminal, that results by reason of the action.
9 For the purpose of any proceeding, civil or criminal, the good faith of any person
10 reporting under par. (a) shall be presumed.

11 (c) The department of health services or an employee of that department may
12 not take disciplinary action against, or threaten to take disciplinary action against,
13 any person because the person in good faith reported any information under par. (a)
14 or initiated, participated in, or testified in, any action or proceeding in which
15 fraudulent activity as described in par. (a) was alleged or because that department
16 or employee believes that the person in good faith reported any information under
17 par. (a) or initiated, participated in, or testified in, such an action or proceeding.

18 (d) Any employee of the department of health services who is subjected to
19 disciplinary action, or who is threatened with disciplinary action, in violation of par.
20 (c) may file a complaint with the department of workforce development under s.
21 106.54 (9). If that department finds that a violation of par. (c) has been committed,
22 that department may take such action under s. 111.39 as will effectuate the purpose
23 of this section. Section 111.322 (2m) applies to a disciplinary action arising in
24 connection with any proceeding under this paragraph.

25 **SECTION 43.** 106.54 (9) of the statutes is created to read:

1 106.54 **(9)** The division shall receive complaints under s. 49.197 (6) (d) or 49.845
2 (4) (d) and shall process the complaints in the same manner that employment
3 discrimination complaints are processed under s. 111.39.

4 **SECTION 44.** 111.322 (2m) (bm) of the statutes is created to read:

5 111.322 **(2m)** (bm) The individual files a complaint or attempts to enforce a
6 right under s. 49.197 (6) (d) or 49.845 (4) (d) or testifies or assists in any action or
7 proceeding under s. 49.197 (6) (d) or 49.845 (4) (d).

8 **SECTION 45.** 120.13 (14) of the statutes is renumbered 120.13 (14) (a).

9 **SECTION 46.** 120.13 (14) (b) of the statutes is created to read:

10 120.13 **(14)** (b) 1. If a person who has contracted under par. (a) to provide a day
11 care program is convicted of a serious crime, as defined in s. 48.685 (1) (c) 3m., or if
12 a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in
13 s. 48.685 (1) (bm), of the day care program is convicted or adjudicated delinquent for
14 committing a serious crime on or after his or her 12th birthday, the school board shall
15 rescind the contract of the contractor immediately upon providing written notice of
16 the rescission and the grounds for the rescission and an explanation of the process
17 for appealing the rescission.

18 2. If a person who has contracted under par. (a) to provide a day care program
19 is the subject of a pending criminal charge alleging that the person has committed
20 a serious crime, as defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s.
21 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the day
22 care program is the subject of a pending criminal charge or delinquency petition
23 alleging that the person has committed a serious crime on or after his or her 12th
24 birthday, the school board shall immediately suspend the contract of the contractor
25 until the school board obtains information regarding the final disposition of the

1 charge or delinquency petition indicating that the person is not ineligible to provide
2 a day care program under this subsection.

3 3. If a person who has contracted under par. (a) to provide a day care program
4 or a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined
5 in s. 48.685 (1) (bm), of the day care program has entered against him or her a
6 temporary restraining order or injunction under s. 813.12, 813.122, 813.123,
7 813.125, 813.127, or 813.128, the school board shall investigate the circumstances
8 giving rise to the temporary restraining order or injunction and may suspend or
9 rescind the contract of the contractor, depending on the gravity of those
10 circumstances, as determined by the school board.

11 **SECTION 47. Initial applicability.**

12 (1) RETROACTIVE APPLICATION. This act first applies to a decision to deny,
13 suspend, revoke, rescind, or refuse to renew a license under section 48.65 of the
14 statutes, a certification under section 48.651 of the statutes, or a contract under
15 section 120.13 (14) of the statutes, or to refuse to pay a child care provider under
16 section 49.133 or 49.155 (7) of the statutes, made on the effective date of this
17 subsection, notwithstanding that the conviction, adjudication, charge, temporary
18 restraining order, or injunction on which the decision is based was obtained, filed,
19 or granted before the effective date of this subsection.

20 **SECTION 48. Effective dates.** This act takes effect on the first day of the 6th
21 month beginning after publication, except as follows:

22 (1) ELIMINATION OF TREATMENT FOSTER HOMES. The repeal and recreation of
23 section 48.685 (4m) (ad) of the statutes takes effect on the date stated in the notice

1 provided by the secretary of children and families and published in the Wisconsin
2 Administrative Register under section 48.62 (9) of the statutes.

3 **(END)**

Barman, Mike

From: Schulze, Connie
Sent: Friday, October 02, 2009 2:45 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-3597/1 Topic: Background checks for child care providers

Please Jacket LRB 09-3597/1 for the SENATE.

Please rush. Thank you!