

# State of Wisconsin



2009 Senate Bill 331

Date of enactment: **November 13, 2009**  
Date of publication\*: **November 25, 2009**

## 2009 WISCONSIN ACT 76

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), 20.437 (1) (jm), 20.437 (2) (jn), 48.685 (1) (c) 2., 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., 48.685 (8), 48.981 (3) (cm), 49.197 (2) (c) and 49.197 (2) (c); *to repeal and recreate* 20.437 (1) (jm), 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), 48.981 (3) (c) 5r., 49.133 (1m) (b), 49.133 (2m) (intro.), 49.155 (8), 49.197 (6), 49.895 (4) (a) 2. and 3., 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 or who is the subject of a pending criminal charge or delinquency petition for committing a serious crime 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 reside at a premises where child care is provided; requiring suspected fraudulent activity on the part of a recipient of public assistance or a participant in the Wisconsin Works Program, including a person receiving a child care subsidy under that program, to be reported to an immediate supervisor, to the sheriff, and to the departmental fraud investigation unit; ineligibility for a child care subsidy under Wisconsin Shares for a violation under the program; use of funds recovered for detecting fraud under Wisconsin Shares; making an appropriation; and providing a penalty.

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

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

20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule for the purposes specified in ss. 48.685 (2) (am) and (b) 1., (3) (a) ~~and (am)~~, (b), ~~and (bm)~~, and (5) (a), 49.45 (47), 50.02 (2), 50.025, 50.031, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5), 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and 146.40 (4r) (b) and (er), and subch. IV

of ch. 50 and to conduct health facilities plan and rule development activities, for accrediting nursing homes, convalescent homes, and homes for the aged, to conduct capital construction and remodeling plan reviews under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or certifying, and approving facilities, issuing permits, and providing technical assistance, that are not specified under any other paragraph in this subsection. All moneys received under ss. 48.685 (8), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025, 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 (1) (c), and 50.981, all moneys

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

received from fees for the costs of inspecting, licensing or certifying, and approving facilities, issuing permits, and providing technical assistance, that are not specified under any other paragraph in this subsection, and all moneys received under s. 50.135 (2) shall be credited to this appropriation account.

**SECTION 1g.** 20.437 (1) (jm) of the statutes, as affected by 2009 Wisconsin Act 28, section 493d, is amended to read:

20.437 (1) (jm) *Licensing activities.* All moneys received from licensing activities under ss. 48.60, 48.62, 48.625, and 938.22 (7) ~~and~~, from fees under ss. 48.615, 48.625, and 938.22 (7) (b) and (c), ~~and from fees under s. 48.685 (8) charged to entities other than day care centers or day care providers,~~ for the costs of licensing child welfare agencies under s. 48.60, foster homes and treatment foster homes under s. 48.62, group homes under s. 48.625, and shelter care facilities under s. 938.22 (7) ~~and for the purposes specified in s. 48.685 (2) (am) and (b) 1., (3) (a) and (b), and (5) (a) with respect to those entities.~~

**SECTION 1j.** 20.437 (1) (jm) of the statutes, as affected by 2009 Wisconsin Act 28, section 476h, and 2009 Wisconsin Act .... (this act), is repealed and recreated to read:

20.437 (1) (jm) *Licensing activities.* All moneys received from licensing activities under ss. 48.60, 48.62, 48.625, and 938.22 (7), from fees under ss. 48.615, 48.625, and 938.22 (7) (b) and (c), and from fees under s. 48.685 (8) charged to entities other than day care centers or day care providers, for the costs of licensing child welfare agencies under s. 48.60, foster homes under s. 48.62, group homes under s. 48.625, and shelter care facilities under s. 938.22 (7) and for the purposes specified in s. 48.685 (2) (am) and (b) 1., (3) (a) and (b), and (5) (a) with respect to those entities.

**SECTION 1m.** 20.437 (2) (jn) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

20.437 (2) (jn) *Child care licensing and certification activities.* All moneys received from licensing activities under s. 48.65, from certifying activities under s. 48.651, ~~and~~ from fees under ss. 48.65 (3) and 48.651 (2), ~~and from fees under s. 48.685 (8) charged to day care centers and day care providers~~ for the costs of licensing day care centers under s. 48.65 and of certifying day care providers under s. 48.651 ~~and for the purposes specified in s. 48.685 (2) (am), (ar), and (b) 1. and 2., (3) (am) and (bm), and (5) (a) with respect to day care centers and day care providers.~~

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

48.651 (3) (a) If a day care provider certified under sub. (1) is convicted of a serious crime, as defined in s. 48.685 (1) (c) 3m., 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 day care provider is convicted or adjudicated delinquent for committing a serious crime on

or after his or her 12th birthday, 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 revoke the certification of the day care provider immediately upon providing written notice of revocation and the grounds for revocation and an explanation of the process for appealing the revocation.

(b) If a day care provider certified under sub. (1) 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 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 day 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 in a county having a population of 500,000 or more, a county department, or an agency contracted with under sub. (2) shall immediately suspend the certification of the day 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).

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

48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2), 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1), 948.30, or 948.53.

**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 7.

**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 obtain all of the following with respect to a caregiver specified in sub. (1) (ag) 1. b., a nonclient resident of an entity, and a person under 18 years of age, but not under 12 years of

age, who is a caregiver 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 6.** 48.685 (2) (am) 5. of the statutes is amended to read:

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

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

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

**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.

**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 depart-

ment, 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 year, 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.

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

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

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

48.685 (3) (a) Every Subject to par. (am), every 4 years or at any time within that period that the department, a county department, or a child welfare agency, or a school board considers appropriate, the department, county department, or child welfare agency, or school board shall request the information specified in sub. (2) (am) 1. to 5. for all 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) 1. Every 3 months 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. to 5. 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. Beginning on January 1, 2011, and annually after that, the department shall submit a report to the appropriate standing committees of the legislature under s. 13.172 (3) describing the information collected under this subdivision, specifically any information indicating that a caregiver specified in sub. (1) (ag) 1. b. is ineligible under sub. (4m) (a) to be licensed under s. 48.65 to operate a day care center, certified under s. 48.651 as a child care provider, or contracted under s. 120.13 (14) to operate a day care center, and describing any action taken in response to the receipt of information under this subdivision indicating that such a caregiver is so ineligible.

2. Every year 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. to 5. and (ar) for all persons who are nonclient residents of a caregiver specified in sub. (1) (ag) 1. b. 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 year 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 who are 18 years of age or over.

**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 or 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.

**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.

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

48.685 (4m) (b) 1. That the person has been convicted of a serious crime or, if the person 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, 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 or 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.

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

48.685 (5) (a) Subject to ~~par. pars.~~ (bm) and (br), the department may license to operate an entity, 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 under s. 48.651, a county department or a child welfare agency may license under s. 48.62, and a school board may contract with under s. 120.13 (14) a person who otherwise may not be licensed, certified, or contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an entity may employ, contract with, or permit to reside at the entity a person who otherwise may not be employed, contracted with, or permitted to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the county department, the contracted 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 criminal 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. 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), or 943.32 (2).

3m. Except for purposes 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, a violation of s. 943.201, 943.203, 943.32 (2), or 943.38 (1) or (2); a violation of s. 943.34 (1), 943.395 (1), 943.41 (3) (e), (4) (a), (5), (6), or (6m), 943.45 (1), 943.455 (2), 943.46 (2), 943.47 (2), 943.50 (1m), or 943.70 (2) (a) or (am) or (3) (a) that is a felony; or an offense under subch. IV of ch. 943 that is a felony.

4. A violation of sub. (2), (3), (4m) (b), or (6), if the violation involves the provision of false information to or the intentional withholding of information from the department, a county department, an agency contracting under s. 48.651 (2), a school board, or an entity.

5. An offense involving fraudulent activity as a participant in the Wisconsin Works program under ss. 49.141 to 49.161, including as a recipient of a child care subsidy under s. 49.155, or as a recipient of aid to families with dependent children under s. 49.19, medical assistance under subch. IV of ch. 49, food stamps benefits under the food stamp program under [7 USC 2011 to 2036](#), supplemental security income payments under s. 49.77, payments for the support of children of supplemental security income recipients under s. 49.775, or health care benefits under the Badger Care health care program under s. 49.665.

6. A violation of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), or (6), 940.20, 940.203, 940.205, 940.207, 940.25, or 943.23 (1g), 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 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.

7. A violation of s. 948.22 (2), if 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., unless the person has paid all arrearages due and is meeting his or her current support obligations.

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

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

48.685 (6) (am) ~~Every~~ Except as provided in this paragraph, every 4 years an entity shall require all of its caregivers and nonclient residents to complete a background information form that is provided to the entity by the department. Every year 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 shall require all of its caregivers and non-client residents to complete a background information form that is provided to the day care center or day care provider by the department.

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

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

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

48.685 (8) The department, the department of health services, a county department, an agency contracted with under s. 48.651 (2), a child welfare agency, or a school board may charge a fee for obtaining the information required under sub. (2) (am), ~~(ar)~~, or (3) (a) or (am) or for providing information to an entity to enable the entity to comply with sub. (2) (b) 1. or (3) (b). The fee may not exceed the reasonable cost of obtaining the information. No fee may be charged to a nurse aide, as defined in s. 146.40 (1) (d), for obtaining or maintaining information if to do so would be inconsistent with federal law.

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

48.715 (4g) (a) 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 is convicted of a serious crime, as defined in s. 48.685 (1) (c) 3m., 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 day care center is convicted or adjudicated delinquent for committing a serious crime on or after his or her 12th birthday, the department shall revoke the license of the day care center immediately upon providing written notice of revocation and the grounds for revocation and an explanation of the process for appealing the revocation.

(b) 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 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 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 day care center 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 shall immediately suspend the license of the day care center until the department obtains information regarding the final disposition of the charge or delinquency petition indicating that the person is not ineligible to be licensed to operate a day care center.

**SECTION 29m.** 48.981 (3) (c) 5r. of the statutes is created to read:

48.981 (3) (c) 5r. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines under subd. 4. that a specific person has abused or neglected a child, the county department, department, or licensed child welfare agency, within 15 days after the date of the determination, shall provide the subunit of the department that administers s. 48.685 with information about the person who has been determined to have abused or neglected the child.

**SECTION 29p.** 48.981 (3) (cm) of the statutes is amended to read:

48.981 (3) (cm) Contract with licensed child welfare agencies. A county department may contract with a licensed child welfare agency to fulfill the county department's duties specified under par. (c) 1., 2. b., 2m. b., 5., 5r., 6., 6m., and 8. The department may contract with a licensed child welfare agency to fulfill the department's duties specified under par. (c) 1., 2. a., 2m. b., 3., 4., 5., 5m., 5r., 6., 7., 8., and 9. in a county having a population of 500,000 or more. The confidentiality provisions specified in sub. (7) shall apply to any licensed child wel-

fare agency with which a county department or the department contracts.

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

49.133 (1m) (a) ~~The~~ If a child care provider is convicted of a serious crime, as defined in s. 48.685 (1) (c) 3m., 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) (b) of the statutes is created to read:

49.133 (1m) (b) 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 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 33.** 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 pend-

ing 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 34.** 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 35.** 49.133 (3) of the statutes is renumbered 49.133 (2m) (c).

**SECTION 36.** 49.133 (4) of the statutes, as created by 2009 Wisconsin Act 28, is renumbered 49.133 (2m) (d).

**SECTION 37.** 49.155 (7) of the statutes, as affected by 2009 Wisconsin Act 28, is repealed and recreated to read:

49.155 (7) REFUSAL TO PAY CHILD CARE PROVIDERS.

(a) 1. If a child care provider is convicted of a serious crime, as defined in s. 48.685 (1) (c) 3m., 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 the county department under s. 46.215, 46.22, or 46.23 shall refuse to pay the child care provider for any child care provided under this section beginning on the date of the conviction or delinquency adjudication.

2. 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 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 the 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 this section 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.

(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.

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

**SECTION 37f.** 49.155 (8) of the statutes is created to read:

49.155 (8) INELIGIBILITY FOR CONVICTION OF VIOLATION. Notwithstanding sub. (1m) and ss. 49.141 (7) (c) and 49.151 (2), if a court finds or it is determined after an administrative hearing that an individual who is receiving or has received a child care subsidy under this section has violated any provision of, or rule promulgated under, this section, the individual shall be ineligible for up to 5 years, beginning on the date of the judgment or decision, to receive a child care subsidy under this section.

**SECTION 37k.** 49.197 (2) (c) of the statutes, as affected by 2009 Wisconsin Act 28, section 1262, is amended to read:

49.197 (2) (c) A county department, Wisconsin Works agency, or tribal governing body that establishes a program under par. (b) shall advise both the department and the department of health services of the date on which the program was established and, on an ongoing basis, of any amounts recovered as a result of the program. A county department, Wisconsin Works agency, or tribal governing body may retain any amounts recovered under a program under this subsection and ~~must use the moneys retained to pay cash benefits to Wisconsin Works participants for any purpose for which moneys under the Temporary Assistance for Needy Families block grant program may be used under federal law.~~

**SECTION 37m.** 49.197 (2) (c) of the statutes, as affected by 2009 Wisconsin Act 28, section 1262m, is amended to read:

49.197 (2) (c) A county department, Wisconsin Works agency, or tribal governing body that establishes a program under par. (b) shall advise both the department and the department of health services of the date on which the program was established and, on an ongoing basis, of any amounts recovered as a result of the program. Except as provided in par. (cm), a county department, Wisconsin



Works agency, or tribal governing body may retain any amounts recovered under a program under this subsection and ~~must use the moneys retained to pay cash benefits to Wisconsin Works participants for any purpose for which moneys under the Temporary Assistance for Needy Families block grant program may be used under federal law.~~

**SECTION 37n.** 49.197 (6) of the statutes is created to read:

49.197 (6) REPORTING OF SUSPECTED FRAUDULENT ACTIVITY. (a) 1. If any employee of the department, a county, or a tribal governing body reasonably suspects that fraudulent activity as described in sub. (1m) or (2) (b) has occurred or is occurring, the employee shall immediately report the facts and circumstances contributing to that suspicion to the employee's immediate supervisor.

2. An immediate supervisor who receives a report under subd. 1. shall immediately evaluate the report to determine whether there is reason to suspect that the fraudulent activity has occurred or is occurring. If the immediate supervisor determines that there is reason to suspect that the fraudulent activity has occurred or is occurring, the immediate supervisor shall immediately report the facts and circumstances contributing to that suspicion to the unit of the department that is responsible for investigating suspected fraudulent activity under sub. (1m). If the immediate supervisor is an employee of the department or of a county having a population of 145,000 or more, the immediate supervisor shall also immediately report those facts and circumstances to the sheriff.

3. Except as provided in subd. 2., an immediate supervisor who receives a report under subd. 1. shall keep the identity of the reporter confidential. A sheriff or unit of the department that receives a report under subd. 2. shall keep the identity of the employee reporting under subd. 1. and the immediate supervisor reporting under subd. 2. confidential until the sheriff or unit determines that the report merits further investigation. If the sheriff or unit conducts a full investigation, the sheriff or unit shall keep the identity of that employee and immediate supervisor confidential if it is reasonably possible to do so. Any person who fails to report as required in subd. 1. or 2. may be required to forfeit not more than \$1,000.

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

(c) The department, a county, a tribal governing body, or an employee of the department, a county, or a tribal governing body may not take disciplinary action against, or threaten to take disciplinary action against,

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

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

**SECTION 37q.** 49.845 (4) of the statutes is renumbered 49.845 (4) (a) 1. and amended to read:

49.845 (4) (a) 1. Notwithstanding s. 49.197 (1m) and (3), the department of children and families may contract with the department of health services to investigate suspected fraudulent activity on the part of recipients of aid to families with dependent children under s. 49.19 and participants in Wisconsin Works under ss. 49.141 to 49.161 and to conduct activities to reduce payment errors in Wisconsin Works under ss. 49.141 to 49.161, as provided in this section. If any employee of the department of health services reasonably suspects that fraudulent activity as described in this subdivision has occurred or is occurring, the employee shall immediately report the facts and circumstances contributing to that suspicion to the employee's immediate supervisor.

**SECTION 37s.** 49.895 (4) (a) 2. and 3. of the statutes are created to read:

49.895 (4) (a) 2. An immediate supervisor who receives a report under subd. 1. shall immediately evaluate the report to determine whether there is reason to suspect that the fraudulent activity has occurred or is occurring. If the immediate supervisor determines that there is reason to suspect that the fraudulent activity has occurred or is occurring, the immediate supervisor shall immediately report the facts and circumstances contributing to that suspicion to the sheriff and to the unit of the department of health services that is responsible for investigating suspected fraudulent activity as described in subd. 1.

3. Except as provided in subd. 2., an immediate supervisor who receives a report under subd. 1. shall keep the identity of the reporter confidential. A sheriff or unit of the department of health services that receives a report under subd. 2. shall keep the identity of the employee reporting under subd. 1. and the immediate supervisor reporting under subd. 2. confidential until the sheriff or

unit determines that the report merits further investigation. If the sheriff or unit conducts a full investigation, the sheriff or unit shall keep the identity of that employee and immediate supervisor confidential if it is reasonably possible to do so. Any person who fails to report as required in subd. 1. or 2. may be required to forfeit not more than \$1,000.

**SECTION 37t.** 49.895 (4) (b), (c) and (d) of the statutes are created to read:

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

(c) The department of health services or an employee of that department may not take disciplinary action against, or threaten to take disciplinary action against, any person because the person in good faith reported any information under par. (a) 1. or 2. or initiated, participated in, or testified in, any action or proceeding in which fraudulent activity as described in par. (a) 1. was alleged or because that department or employee believes that the person in good faith reported any information under par. (a) 1. or 2. or initiated, participated in, or testified in, such an action or proceeding.

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

**SECTION 37v.** 106.54 (9) of the statutes is created to read:

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

**SECTION 37x.** 111.322 (2m) (bm) of the statutes is created to read:

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

**SECTION 38.** 120.13 (14) of the statutes is renumbered 120.13 (14) (a).

**SECTION 39.** 120.13 (14) (b) of the statutes is created to read:

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

2. If a person who has contracted under par. (a) to provide a day care program 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 if a caregiver specified in s. 48.685 (1) (ag) 1. a. or a non-client resident, as defined in s. 48.685 (1) (bm), of the day care program 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 school board shall immediately suspend the contract of the contractor until the school board obtains information regarding the final disposition of the charge or delinquency petition indicating that the person is not ineligible to provide a day care program under this subsection.

**SECTION 40. Initial applicability.**

(1) RETROACTIVE APPLICATION. Except for the treatment of sections 49.155 (8) and 49.197 (2) (c) (by SECTIONS 37k and 37m) of the statutes, this act first applies to a decision to deny, suspend, revoke, rescind, or refuse to renew a license under section 48.65 of the statutes, a certification under section 48.651 of the statutes, or a contract under section 120.13 (14) of the statutes, or to refuse to pay a child care provider under section 49.133 or 49.155 (7) of the statutes, made on the effective date of this subsection, notwithstanding that the conviction, adjudication, or charge on which the decision is based was obtained or filed before the effective date of this subsection.

(2) INELIGIBILITY FOR CONVICTION OF VIOLATION. The treatment of section 49.155 (8) of the statutes first applies to judgments granted and decisions made on the effective date of this subsection.

**SECTION 41. Effective dates.** This act takes effect on the first day of the 3rd month beginning after publication, except as follows:

(1) ELIMINATION OF TREATMENT FOSTER HOMES. The repeal and recreation of sections 20.437 (1) (jm) and 48.685 (4m) (ad) of the statutes takes effect on the date stated in the notice provided by the secretary of children and families and published in the Wisconsin Administrative Register under section 48.62 (9) of the statutes.

(2) INELIGIBILITY FOR CONVICTION OF VIOLATION. The treatment of section 49.155 (8) of the statutes and SEC-

**2009 Senate Bill 331**

**2009 Wisconsin Act 76**

SECTION 40 (2) of this act take effect on the day after publication.

(2m) INCENTIVE PROGRAM FOR WISCONSIN SHARES FRAUD DETECTION.

(a) The treatment of section 49.197 (2) (by SECTION

37k) of the statutes takes effect on the day after publication.

(b) The treatment of section 49.197 (2) (by SECTION 37m) of the statutes takes effect on January 1, 2010, or on the day after publication, whichever is later.

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