



2003 ASSEMBLY BILL 470

August 14, 2003 - Introduced by Representatives WIECKERT, HUBER, BIES, MUSSER, LADWIG, MCCORMICK, ALBERS, KREIBICH, J. LEHMAN, COGGS and GUNDERSON, cosponsored by Senators ROESSLER, STEPP and RISSER. Referred to Committee on Children and Families.

1 **AN ACT to amend** 20.435 (6) (jm), 48.685 (1) (am), 48.685 (1) (b), 48.685 (1) (bm),
2 48.685 (2) (am) (intro.), 48.685 (2) (am) 5., 48.685 (2) (b) 1. e., 48.685 (2) (b) 4.,
3 48.685 (2) (bd), 48.685 (3) (a), 48.685 (3m), 48.685 (4m) (a) (intro.), 48.685 (4m)
4 (a) 1., 48.685 (4m) (a) 3., 48.685 (4m) (a) 4., 48.685 (5) (a), 48.685 (5m), 48.685
5 (6) (a) and 48.685 (8); and **to create** 48.685 (1) (ag) 1. c. and 48.685 (2) (ar) of
6 the statutes; **relating to:** requiring the Department of Health and Family
7 Services to maintain a voluntary registry of persons who provide care and
8 supervision for children, but who are not licensed to provide that care and
9 supervision or employed or contracted with by a person who is licensed to
10 provide that care and supervision, and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, a person who for compensation provides day care for four or more children must obtain a license to operate a day care center from the Department of Health and Family Services (DHFS). Currently, DHFS may not license an applicant to operate a day care center, and a person operating a day care center may not employ or contract with a caregiver or permit a nonclient to reside

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at the day care center, if the applicant, caregiver, or nonclient resident has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime, has abused or neglected a client or misappropriated the property of a client, or has abused or neglected a child or, in the case of a position for which a person must be credentialed by the Department of Regulation and Licensing (DRL), the person's credential is not current or is limited so as to prevent the person from providing adequate care to a client (disqualifying circumstances), unless the applicant, caregiver, or nonclient resident demonstrates that he or she has been rehabilitated. To determine whether any disqualifying circumstances apply to a person, DHFS must obtain a criminal history search from records maintained by the Department of Justice, information contained in a registry maintained by DHFS of individuals who have abused or neglected a client or who have misappropriated the property of a client, information maintained by DRL regarding the person's credentials, information maintained by DHFS regarding substantiated reports of child abuse or neglect, and information maintained by DHFS regarding any denial of a license, certification, or contract to operate, employment at or a contract with, or permission to reside at a day care center, a child welfare agency, a foster or treatment foster home, a group home, or a shelter care facility (entity) due to a disqualifying circumstance (background check). These requirements, however, do not apply to a person, such as a baby-sitter, nanny, or au pair, who provides care for less than four children.

This bill permits any person who provides, or who is expected to provide, care and supervision for a child, but who does not have, and is not seeking, a license to operate an entity and who is not, and is not expected to be, an employee or contractor of an entity (nonlicensed caregiver), to request DHFS to list the nonlicensed caregiver's name in a registry that DHFS is required to maintain under the bill. On receipt of such a request, DHFS must conduct a background check of the nonlicensed caregiver and, if the nonlicensed caregiver is providing, or is expected to provide, care in the nonlicensed caregiver's home, all nonclients who reside in the nonlicensed caregiver's home to determine whether any disqualifying circumstance applies to the nonlicensed caregiver or a nonclient resident. If no disqualifying circumstances apply, DHFS must list the nonlicensed caregiver in the registry. If a disqualifying circumstance applies, DHFS may not list the nonlicensed caregiver in the registry and must so advise the nonlicensed caregiver, stating the reason why the nonlicensed caregiver is ineligible for listing in the registry. A nonlicensed caregiver who is denied listing in the registry may demonstrate to DHFS that he or she or, if applicable, a nonclient resident of the nonlicensed caregiver has been rehabilitated.

Any individual who has employed or contracted with, or who is expecting to employ or contract with, a nonlicensed caregiver to provide care and supervision for the individual's child may request DHFS to search the registry for the name of the nonlicensed caregiver. The bill also requires a temporary employment agency that places nonlicensed caregivers with or refers nonlicensed caregivers to persons who are not entities to conduct background checks of those nonlicensed caregivers and prohibits a temporary employment agency from employing or contracting with a

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nonlicensed caregiver if any disqualifying circumstance applies to the nonlicensed caregiver.

For further information see the *state* 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 is amended to read:

2 20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule
3 for the purposes specified in ss. 48.685 (2) (am), (ar), and (b) 1., (3) (a) and (b), and
4 (5) (a), 49.45 (47), 50.02 (2), 50.025, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5),
5 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, and 50.981 and
6 subch. IV of ch. 50 and to conduct health facilities plan and rule development
7 activities, for accrediting nursing homes, convalescent homes, and homes for the
8 aged, to conduct capital construction and remodeling plan reviews under ss. 50.02
9 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing, and approving
10 facilities, issuing permits, and providing technical assistance that are not specified
11 under any other paragraph in this subsection. All moneys received under ss. 48.685
12 (8), 49.45 (47) (c), 50.02 (2), 50.025, 50.065 (8), 50.13, 50.36 (2), 50.49 (2) (b), 50.495,
13 50.52 (2) (a), 50.57, 50.93 (1) (c), and 50.981, all moneys received from fees for the
14 costs of inspecting, licensing, and approving facilities, issuing permits, and
15 providing technical assistance that are not specified under any other paragraph in
16 this subsection, and all moneys received under 50.135 (2), less the amounts credited
17 to the appropriation account under sub. (4) (gm), shall be credited to this
18 appropriation account.

19 **SECTION 2.** 48.685 (1) (ag) 1. c. of the statutes is created to read:

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1 48.685 (1) (ag) 1. c. A person who provides, or is expected to provide, care and
2 supervision for a client, but who is not, and is not expected to be, an employee or
3 contractor of an entity and who does not have, and is not seeking, a license,
4 certification, or contract to operate an entity.

5 **SECTION 3.** 48.685 (1) (am) of the statutes is amended to read:

6 48.685 (1) (am) “Client” means a child who receives direct care or treatment
7 services from a caregiver specified in par. (ag) 1. c. or an entity.

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

9 48.685 (1) (b) “Entity” means a child welfare agency that is licensed under s.
10 48.60 to provide care and maintenance for children, to place children for adoption,
11 or to license foster homes or treatment foster homes; a foster home or treatment
12 foster home that is licensed under s. 48.62; a group home that is licensed under s.
13 48.625; a shelter care facility that is licensed under s. 938.22; a day care center that
14 is licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a day
15 care provider that is certified under s. 48.651; or a temporary employment agency
16 that provides caregivers to another entity or that places caregivers with or refers
17 caregivers to a person who is not an entity.

18 **SECTION 5.** 48.685 (1) (bm) of the statutes is amended to read:

19 48.685 (1) (bm) “Nonclient resident” means a person who resides, or is expected
20 to reside, at an entity, who is not a client of the entity, and who has, or is expected
21 to have, regular, direct contact with clients of the entity or a person who resides, or
22 is expected to reside, with a caregiver specified in par. (ag) 1. c. who provides care and
23 supervision for clients in the caregiver’s home, who is not a client of the caregiver,
24 and who has, or is expected to have, regular, direct contact with clients of the
25 caregiver.

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

2 48.685 **(2)** (am) (intro.) The department, a county department, a child welfare
3 agency, or a school board shall obtain all of the following with respect to a caregiver
4 specified in sub. (1) (ag) 1. b., a caregiver specified in sub. (1) (ag) 1. c. who applies
5 for registration under par. (ar) 1. and, if applicable, a nonclient resident of that
6 caregiver, a nonclient resident of an entity, and a person under 18 years of age, but
7 not under 12 years of age, who is a caregiver of a day care center that is licensed under
8 s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider
9 that is certified under s. 48.651:

10 **SECTION 7.** 48.685 (2) (am) 5. of the statutes is amended to read:

11 48.685 **(2)** (am) 5. Information maintained by the department under this
12 section and under ss. 48.651 (2m), 48.75 (1m), and 120.13 (14) regarding any denial
13 to the person of a license, continuation or renewal of a license, certification, or a
14 contract to operate an entity for a reason specified in sub. (4m) (a) 1. to 5., regarding
15 any denial to the person of registration under par. (ar) 1. for a reason specified in sub.
16 (4m) (a) 1. to 5., and regarding any denial to the person of employment at, a contract
17 with, or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to
18 5. If the information obtained under this subdivision indicates that the person has
19 been denied a license, continuation or renewal of a license, certification, a contract,
20 registration, employment, or permission to reside as described in this subdivision,
21 the department, a county department, a child welfare agency, or a school board need
22 not obtain the information specified in subs. 1. to 4.

23 **SECTION 8.** 48.685 (2) (ar) of the statutes is created to read:

24 48.685 **(2)** (ar) 1. The department shall establish and maintain a registry
25 listing all caregivers specified in sub. (1) (ag) 1. c. who have applied for registration

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1 under this subdivision and who have been determined by the department to be
2 eligible for listing in the registry. Any caregiver specified in sub. (1) (ag) 1. c. may
3 request the department to list the caregiver's name in the registry. On receipt of such
4 a request, the department shall obtain the information specified in sub. (2) (am) 1.
5 to 5. for the caregiver and, if the caregiver is providing, or is expected to provide, care
6 and supervision for clients in the caregiver's home, all nonclient residents of the
7 caregiver. If none of the circumstances specified in sub. (4m) (a) 1. to 5. apply to the
8 caregiver or, if applicable, to any nonclient resident of the caregiver, the department
9 shall list the caregiver in the registry and so advise the caregiver. If any of the
10 circumstances specified in sub. (4m) (a) 1. to 5. apply to the caregiver or, if applicable,
11 to any nonclient resident of the caregiver, the department may not list the caregiver
12 in the registry and shall so advise the caregiver, stating the specific reason why the
13 caregiver is ineligible for listing in the registry. A caregiver who is denied listing in
14 the registry may demonstrate to the department under sub. (5) (a) that the caregiver
15 or, if applicable, any nonclient resident of the caregiver has been rehabilitated.

16 2. Any individual who has employed or contracted with, or who is expecting to
17 employ or contract with, a caregiver specified in sub. (1) (ag) 1. c. to provide care and
18 supervision for a child of the individual may request the department to search the
19 registry for the name of the caregiver. On receipt of such a request, the department
20 shall search the registry for the name of the caregiver and shall advise the individual
21 whether the person is listed in the registry.

22 **SECTION 9.** 48.685 (2) (b) 1. e. of the statutes is amended to read:

23 48.685 (2) (b) 1. e. Information maintained by the department under this
24 section and under ss. 48.651 (2m), 48.75 (1m), and 120.13 (14) regarding any denial
25 to the person of a license, continuation or renewal of a license, certification, or a

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1 contract to operate an entity for a reason specified in sub. (4m) (a) 1. to 5., regarding
2 any denial to the person of registration under par. (ar) 1. for a reason specified in sub.
3 (4m) (a) 1. to 5., and regarding any denial to the person of employment at, a contract
4 with, or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to
5 5. If the information obtained under this subd. 1. e. indicates that the person has
6 been denied a license, continuation or renewal of a license, certification, a contract,
7 registration, employment, or permission to reside as described in this subd. 1. e., the
8 entity need not obtain the information specified in subd. 1. a. to d.

9 **SECTION 10.** 48.685 (2) (b) 4. of the statutes is amended to read:

10 48.685 (2) (b) 4. Subdivision 1. does not apply with respect to a person under
11 18 years of age, but not under 12 years of age, who is a caregiver ~~or nonclient resident~~
12 of a day care center that is licensed under s. 48.65 or established or contracted for
13 under s. 120.13 (14) or of a day care provider that is certified under s. 48.651 and with
14 respect to whom the department, a county department, or a school board is required
15 under par. (am) (intro.) to obtain the information specified in par. (am) 1. to 5.

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

17 48.685 (2) (bd) Notwithstanding pars. (am) and (b) 1., the department, a county
18 department, a child welfare agency, or a school board is not required to obtain the
19 information specified in par. (am) 1. to 5., and an entity is not required to obtain the
20 information specified in par. (b) 1. a. to e., with respect to a person under 18 years
21 of age whose background information form under sub. (6) (a) or (am) indicates that
22 the person is not ineligible to be registered under par. (ar) 1. for a reason specified
23 in sub. (4m) (a) 1. to 5., or to be employed, contracted with, or permitted to reside at
24 an entity for a reason specified in sub. (4m) (b) 1. to 5., and with respect to whom the
25 department, county department, child welfare agency, school board, or entity

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1 otherwise has no reason to believe that the person is ineligible to be registered,
2 employed, contracted with, or permitted to reside at an entity for any of those
3 reasons. This paragraph does not preclude the department, a county department,
4 a child welfare agency, or a school board from obtaining, at its discretion, the
5 information specified in par. (am) 1. to 5. with respect to a person described in this
6 paragraph who is a nonclient resident or a prospective nonclient resident of a
7 caregiver specified in sub. (1) (ag) 1. c. or an entity.

8 **SECTION 12.** 48.685 (3) (a) of the statutes is amended to read:

9 48.685 (3) (a) Every 4 years or at any time within that period that the
10 department, a county department, a child welfare agency, or a school board considers
11 appropriate, the department, county department, child welfare agency, or school
12 board shall request the information specified in sub. (2) (am) 1. to 5. for all persons
13 who are licensed, certified, or contracted to operate an entity, for all caregivers who
14 are registered under sub. (2) (ar) 1. and, if applicable, all nonclient residents of those
15 caregivers, for all persons who are nonclient residents of an entity, and for all persons
16 under 18 years of age, but not under 12 years of age, who are caregivers of a day care
17 center that is licensed under s. 48.65 or established or contracted for under s. 120.13
18 (4) or of a day care provider that is certified under s. 48.651.

19 **SECTION 13.** 48.685 (3m) of the statutes is amended to read:

20 48.685 (3m) Notwithstanding subs. (2) (b) 1. and (3) (b), if the department, a
21 county department, a child welfare agency, or a school board has obtained the
22 information required under sub. (2) (am) or (3) (a) with respect to a person who is a
23 caregiver specified in sub. (1) (ag) 1. b., a caregiver registered under sub. (2) (ar) 1.,
24 or, if applicable, a nonclient resident of a caregiver registered under sub. (2) (ar) 1.,
25 and if that person is also an employee, contractor, or nonclient resident of an entity,

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1 the entity is not required to obtain the information specified in sub. (2) (b) 1. or (3)
2 (b) with respect to that person.

3 **SECTION 14.** 48.685 (4m) (a) (intro.) of the statutes is amended to read:

4 48.685 **(4m)** (a) (intro.) Notwithstanding s. 111.335, and except as provided in
5 par. (ad) and sub. (5), the department may not license, or continue or renew the
6 license of, a person to operate an entity or register a person under sub. (2) (ar) 1., a
7 county department may not certify a day care provider under s. 48.651, a county
8 department or a child welfare agency may not license, or renew the license of, a foster
9 home or treatment foster home under s. 48.62, and a school board may not contract
10 with a person under s. 120.13 (14), if the department, county department, child
11 welfare agency, or school board knows or should have known any of the following:

12 **SECTION 15.** 48.685 (4m) (a) 1. of the statutes is amended to read:

13 48.685 **(4m)** (a) 1. That the person has been convicted of a serious crime or, if
14 the person is an applicant for issuance or continuation of a license to operate a day
15 care center or for initial certification under s. 48.651 or for renewal of that
16 certification or if the person is proposing to contract with a school board under s.
17 120.13 (14) or to renew a contract under that subsection, that the person has been
18 convicted of a serious crime or adjudicated delinquent on or after his or her 12th
19 birthday for committing a serious crime or, if the person has requested registration
20 under sub. (2) (ar) 1., that the person or, if applicable, a nonclient resident of the
21 person has been convicted of a serious crime or adjudicated delinquent on or after his
22 or her 12th birthday for committing a serious crime.

23 **SECTION 16.** 48.685 (4m) (a) 3. of the statutes is amended to read:

24 48.685 **(4m)** (a) 3. That a unit of government or a state agency, as defined in
25 s. 16.61 (2) (d), has made a finding that the person has abused or neglected any client

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1 or misappropriated the property of any client or, if the person has requested
2 registration under sub. (2) (ar) 1., that the person or, if applicable, a nonclient
3 resident of the person has abused or neglected any client or misappropriated the
4 property of any client.

5 **SECTION 17.** 48.685 (4m) (a) 4. of the statutes is amended to read:

6 48.685 **(4m)** (a) 4. That a determination has been made under s. 48.981 (3) (c)
7 4. that the person has abused or neglected a child or, if the person has requested
8 registration under sub. (2) (ar) 1., that the person or, if applicable, a nonclient
9 resident of the person has abused or neglected a child.

10 **SECTION 18.** 48.685 (5) (a) of the statutes is amended to read:

11 48.685 **(5)** (a) The department may license to operate an entity or register
12 under sub. (2) (ar) 1., a county department may certify under s. 48.651, a county
13 department or a child welfare agency may license under s. 48.62, and a school board
14 may contract with under s. 120.13 (14) a person who otherwise may not be licensed,
15 registered, certified, or contracted with for a reason specified in sub. (4m) (a) 1. to 5.,
16 and an entity may employ, contract with, or permit to reside at the entity a person
17 who otherwise may not be employed, contracted with, or permitted to reside at the
18 entity for a reason specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the
19 department, the county department, the child welfare agency, or the school board or,
20 in the case of an entity that is located within the boundaries of a reservation, to the
21 person or body designated by the tribe under sub. (5d) (a) 3., by clear and convincing
22 evidence and in accordance with procedures established by the department by rule
23 or by the tribe that ~~he or she~~ the person or, if applicable under sub. (2) (ar) 1., a
24 nonclient resident of the person has been rehabilitated.

25 **SECTION 19.** 48.685 (5m) of the statutes is amended to read:

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1 48.685 (5m) Notwithstanding s. 111.335, the department may refuse to license
2 a person to operate an entity, a county department or a child welfare agency may
3 refuse to license a foster home or treatment foster home under s. 48.62, and an entity
4 may refuse to employ or contract with a caregiver or permit a nonclient resident to
5 reside at the entity if the person has been convicted of an offense that is not a serious
6 crime, but that is, in the estimation of the department, county department, child
7 welfare agency, or entity, substantially related to the care of a client.
8 Notwithstanding s. 111.335, the department may refuse to license a person to
9 operate a day care center or to register a person under sub. (2) (ar) 1., a county
10 department may refuse to certify a day care provider under s. 48.651, a school board
11 may refuse to contract with a person under s. 120.13 (14), and a day care center that
12 is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) and or
13 a day care provider that is certified under s. 48.651 may refuse to employ or contract
14 with a caregiver or permit a nonclient resident to reside at the day care center or day
15 care provider if the person or, if applicable under sub. (2) (ar) 1., a nonclient resident
16 of the person has been convicted of or adjudicated delinquent on or after his or her
17 12th birthday for an offense that is not a serious crime, but that is, in the estimation
18 of the department, county department, school board, day care center, or day care
19 provider, substantially related to the care of a client.

20 **SECTION 20.** 48.685 (6) (a) of the statutes is amended to read:

21 48.685 (6) (a) The department shall require any person who applies for
22 issuance, continuation, or renewal of a license to operate an entity or for registration
23 under sub. (2) (ar) 1. and, if applicable, a nonclient resident of a person who applies
24 for registration under sub. (2) (ar) 1., a county department shall require any day care
25 provider who applies for initial certification under s. 48.651 or for renewal of that

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1 certification, a county department or a child welfare agency shall require any person
2 who applies for issuance or renewal of a license to operate a foster home or treatment
3 foster home under s. 48.62, and a school board shall require any person who proposes
4 to contract with the school board under s. 120.13 (14) or to renew a contract under
5 that subsection, to complete a background information form that is provided by the
6 department. Every 4 years the department shall require all persons who are
7 registered under sub. (2) (ar) 1. and, if applicable, all nonclient residents of those
8 persons to complete a background information form that is provided to the person or
9 nonclient resident by the department.

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

11 48.685 (8) The department, a county department, a child welfare agency, or a
12 school board may charge a fee for obtaining the information required under sub. (2)
13 (am) or (3) (a), for providing information to individuals under sub. (2) (ar) 2., or for
14 providing information to an entity to enable the entity to comply with sub. (2) (b) 1.
15 or (3) (b). The fee may not exceed the reasonable cost of obtaining or providing the
16 information. No fee may be charged to a nurse's assistant, as defined in s. 146.40 (1)
17 (d), for obtaining or maintaining information if to do so would be inconsistent with
18 federal law.

19 (END)