



2009 SENATE BILL 384

November 3, 2009 – Introduced by Senators TAYLOR, LAZICH and OLSEN, cosponsored by Representatives KESTELL, TOWNSEND and NYGREN. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT** *to repeal* 948.03 (6); *to amend* 448.03 (6); and *to create* 939.45 (5m) of
2 the statutes; **relating to:** defense to criminal prosecutions for parent or
3 guardian for using spiritual treatment in lieu of medical treatment on a child
4 and the election of Christian Science treatment for a child in lieu of medical or
5 surgical treatment for the cure of disease.

Analysis by the Legislative Reference Bureau

Under current law, a person is not guilty of the crime of physical abuse of a child solely because the person provides a child with treatment by spiritual means instead of medical or surgical treatment. This bill creates a general affirmative defense for a parent or guardian of an individual under the age of 18 who reasonably uses, on the individual, spiritual treatment instead of medical treatment.

Also under current law, a person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment. The bill specifies that this prohibition does not apply where medical or surgical treatment of a child is required under current provisions that permit a child to be taken into custody if the child is suffering from illness or injury or is in immediate danger from his or her surroundings, or to be taken to a hospital or a physician if the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, or if medical or surgical treatment is otherwise required by law.

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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.** 448.03 (6) of the statutes is amended to read:

2 448.03 (6) PRACTICE OF CHRISTIAN SCIENCE. No law of this state regulating the
3 practice of medicine and surgery may be construed to interfere with the practice of
4 Christian Science. A person who elects Christian Science treatment in lieu of
5 medical or surgical treatment for the cure of disease may not be compelled to submit
6 to medical or surgical treatment, unless medical or surgical treatment of a child is
7 required under s. 48.19 (1) (d) 5. or 48.20 (4), or is otherwise required by law.

8 **SECTION 2.** 939.45 (5m) of the statutes is created to read:

9 939.45 (5m) (a) When the actor is a parent or guardian of an individual who
10 has not attained the age of 18 years and the actor's conduct is in good faith and is a
11 reasonable use of spiritual, prayer, or religious treatment in lieu of medical
12 treatment for a condition for the individual.

13 (b) The following factors are relevant in determining whether the use of
14 spiritual, prayer, or religious treatment in lieu of medical treatment was reasonable
15 for purposes of par. (a):

16 1. The age and mental capacity of the individual under the age of 18.

17 2. The health condition for which the individual under the age of 18 was being
18 treated by spiritual, prayer, or religious treatment.

19 3. Whether the individual under the age of 18 exhibited symptoms that would
20 be, or should have been, recognized by the actor as symptoms of a life-threatening
21 condition or of a condition that would result in great bodily harm.

