



2003 ASSEMBLY BILL 401

June 12, 2003 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Children and Families.

1 **AN ACT** *to amend* 48.685 (1) (br), 48.685 (5) (a), 50.065 (1) (dm) and 50.065 (5);
2 and *to create* 48.685 (1) (dr), 48.685 (1) (g), 48.685 (5d) (c), 48.685 (5d) (d),
3 48.685 (7) (bm), 50.065 (1) (fm), 50.065 (1) (h), 50.065 (5d) (c), 50.065 (5d) (d) and
4 50.065 (7) (bm) of the statutes; **relating to:** tribal administration of
5 rehabilitation reviews for persons who otherwise may not operate, be employed
6 at, contract with, or reside at an entity that provides care for children or adults
7 and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the PREFATORY NOTE provided by the Joint Legislative Council in the bill.

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:

PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on State-tribal Relations. The bill is identical to 2001 Assembly Bill 223,

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which was introduced by the 2001–02 Joint Legislative Council on the recommendation of the 2000–02 Special Committee on State–tribal Relations. 2001 Assembly Bill 223 passed the Assembly Bill 223 passed the Assembly on a vote of Ayes, 98, Noes, 0. The senate did not vote on concurrence before adjournment, thus the bill failed to be enacted.

CURRENT LAW**General Background**

Under current law, except as discussed below, if a person has been convicted of certain serious crimes, has abused or neglected a client or a child, has misappropriated the property of a client, or must be credentialed and has credentials that are not current or that are limited so as to restrict the person from providing adequate care to a client, then the following apply:

1. The Department of Health and Family Services (DHFS) may not license, certify, issue a certificate of approval to, or register the person to operate an adult treatment facility, organization, or service or continue the license, certification, certificate of approval, or registration. Adult treatment facilities, services, and organizations include, for example, nursing homes, community-based residential facilities, home health agencies, community mental health programs, and community alcohol and other drug abuse programs. Also, DHFS may not license or continue or renew the license of the person to operate a foster home, treatment foster home, group home, shelter care facility, child welfare agency, or day care center. A facility, organization, or service that provides care for adults or children and that is subject to this law is defined as an “entity.”

2. A county department of human services or county department of social services (county department) or a child welfare agency may not license or renew the license of the person to operate a foster home or treatment foster home.

3. A county department may not certify the person as a day care provider for purposes of reimbursement under the Wisconsin Works (W-2) program.

4. A school board may not contract with the person to operate a day care program.

5. An entity may not employ or contract with the person as a caregiver, or permit the person to reside at the entity as a nonclient resident, if the person has or is expected to have regular direct contact with clients of the entity.

These provisions apply if the appropriate regulatory agency or entity knew or should have known about the person’s record.

Rehabilitation Exception

Under current law, the prohibitions discussed above do not apply to a person who has such a record if the person demonstrates to the appropriate regulatory agency by clear and convincing evidence and in accordance with procedures established by DHFS by administrative rule that he or she has been rehabilitated. For purposes of licensing a foster home or treatment foster home, however, a person convicted of certain crimes specified in s. 48.685 (5) (bm), stats., is not permitted to demonstrate rehabilitation.

Tribal Administration of Rehabilitation Exception

Under current law, a federally recognized American Indian tribe or band in Wisconsin (tribe) may choose to conduct rehabilitation reviews with respect to entities located within the boundaries of the tribe’s reservation. A reservation is defined for this purpose as land in the state within the boundaries of a reservation of a tribe or within the Bureau of Indian Affairs service area for the Ho–Chunk Nation.

A tribe that chooses to do so must submit to DHFS a rehabilitation review plan that includes all of the following:

1. The criteria to be used to determine if a person has been rehabilitated.

2. The title of the person or body designated by the tribe to whom a request for review must be made.

3. The title of the person or body designated by the tribe to determine whether a person has been rehabilitated.

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4. The title of the person or body designated by the tribe to whom a person may appeal an adverse decision and whether the tribe provides any further rights of appeal.

5. The manner in which the tribe will submit information relating to a rehabilitation review to DHFS so that DHFS may include that information in its annual rehabilitation report to the legislature.

6. A copy of the form to be used to request a rehabilitation review and a copy of the form on which a written decision is to be made regarding whether a person has demonstrated rehabilitation.

Current law provides that, if DHFS does not disapprove the plan within 90 days after receiving the plan from the tribe, the plan is considered approved. If, during that 90-day period, DHFS disapproves the plan, DHFS must provide written notice of that disapproval to the tribe, together with the reasons for disapproval. DHFS may not disapprove a plan unless it finds that the plan is not rationally related to the protection of clients. If DHFS disapproves the plan, the tribe may, within 30 days after receiving the notice of disapproval, request that the secretary of health and family services review DHFS's decision. A final decision by the secretary is not subject to further review.

THE BILL

The bill does the following:

1. Amends the definition of "reservation" by deleting the reference to the Bureau of Indian Affairs service area for the Ho-Chunk Nation so that "reservation" means land in Wisconsin within the boundaries of a reservation of a tribe. The bill defines "trust land" as land in Wisconsin held in trust by the federal government for the benefit of a tribe or a member of a tribe. The bill then replaces references to reservation with references to reservation or trust land.

2. Specifies that if a tribe's rehabilitation review plan has been approved by DHFS, the tribe may conduct rehabilitation reviews with respect to all entities on the tribe's reservation or trust land.

3. Permits a tribe to request that DHFS grant the tribe authority to conduct rehabilitation reviews with respect to some, but not all, entities on the tribe's reservation or trust land. Under current law, it is arguable that a tribe may only request authority to conduct rehabilitation reviews for all, but not some, entities on its reservation.

The bill requires DHFS to establish by administrative rule the criteria to be used to determine whether a tribe may be authorized to conduct rehabilitation reviews for some, but not all, entities on the tribe's reservation or trust land. The bill also requires DHFS to grant the tribe's request if those criteria are met.

4. Permits a tribe to request that DHFS grant the tribe authority to conduct rehabilitation reviews with respect to an entity located *outside* the boundaries of the tribe's reservation or trust land that is owned or operated by the tribe or a tribal enterprise (tribal entity). The bill defines "tribal enterprise" as a business that is at least 51% owned and controlled by the governing body of one or more tribes, is actively managed by the governing body, or by the designee of the governing body of one or more Indian tribes, and is currently performing a useful business function.

In evaluating the tribe's request, DHFS must consider factors such as the proximity of the tribal entity to the reservation or trust land and the population to be served by the tribal entity. The bill permits DHFS to grant rehabilitation review authority to the tribe with respect to that tribal entity if DHFS determines that the conduct of rehabilitation reviews by the tribe with respect to that tribal entity is rationally related to the protection of clients.

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1 48.685 (1) (br) "Reservation" means land in this state within the boundaries
2 of a reservation of a tribe ~~or within the bureau of Indian affairs service area for the~~
3 ~~Ho-Chunk Nation.~~

4 **SECTION 2.** 48.685 (1) (dr) of the statutes is created to read:

5 48.685 (1) (dr) "Tribal enterprise" has the meaning given in s. 71.07 (2di) (b)
6 2.

7 **SECTION 3.** 48.685 (1) (g) of the statutes is created to read:

8 48.685 (1) (g) "Trust land" means land in this state held in trust by the federal
9 government for the benefit of a tribe or a member of a tribe.

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

11 48.685 (5) (a) The Except as provided in par. (bm), the department may license
12 to operate an entity, 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 certified, or contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an
16 entity may employ, contract with, or permit to reside at the entity a person who
17 otherwise may not be employed, contracted with, or permitted to reside at the entity
18 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,
20 or, in the case of an entity that is ~~located within the boundaries of a reservation~~
21 subject to rehabilitation reviews by a tribe under sub. (5d) (c) or (d), to the person or
22 body designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence
23 and in accordance with procedures established by the department by rule or by the
24 tribe that ~~he or she~~ the person has been rehabilitated.

25 **SECTION 5.** 48.685 (5d) (c) of the statutes is created to read:

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1 48.685 **(5d)** (c) 1. Subject to subd. 2., a tribe whose rehabilitation review plan
2 has been approved by the department may conduct reviews under sub. (5) with
3 respect to all entities on the tribe's reservation or trust land.

4 2. A tribe may request the department to grant the tribe the authority to
5 conduct rehabilitation reviews under sub. (5) with respect to some, but not all,
6 entities on the tribe's reservation or trust land. The department shall grant that
7 authority if the criteria established by rule under sub. (7) (bm) are satisfied.

8 **SECTION 6.** 48.685 (5d) (d) of the statutes is created to read:

9 48.685 **(5d)** (d) A tribe whose rehabilitation review plan has been approved by
10 the department may request the department to grant the tribe the authority to
11 conduct rehabilitation reviews under sub. (5) with respect to an entity located
12 outside the boundaries of the tribe's reservation or trust land that is owned or
13 operated by the tribe or a tribal enterprise. The department shall evaluate the tribe's
14 request, considering factors such as the proximity of the tribal entity to the
15 reservation or trust land and the population to be served by the tribal entity. If the
16 department determines that the conduct of rehabilitation reviews by the tribe with
17 respect to the tribal entity is rationally related to the protection of clients, the
18 department may authorize the tribe to conduct rehabilitation reviews with respect
19 to the tribal entity.

20 **SECTION 7.** 48.685 (7) (bm) of the statutes is created to read:

21 48.685 **(7)** (bm) Establish by rule criteria for the department to use in
22 determining whether a tribe whose plan is approved under sub. (5d) (b) may be
23 authorized to conduct rehabilitation reviews under sub. (5) for some, but not all,
24 entities on the tribe's reservation or trust land.

25 **SECTION 8.** 50.065 (1) (dm) of the statutes is amended to read:

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1 50.065 (1) (dm) “Reservation” means land in this state within the boundaries
2 of a reservation of a tribe ~~or within the bureau of Indian affairs service area for the~~
3 ~~Ho-Chunk Nation.~~

4 **SECTION 9.** 50.065 (1) (fm) of the statutes is created to read:

5 50.065 (1) (fm) “Tribal enterprise” has the meaning given in s. 71.07 (2di) (b)
6 2.

7 **SECTION 10.** 50.065 (1) (h) of the statutes is created to read:

8 50.065 (1) (h) “Trust land” means land in this state held in trust by the federal
9 government for the benefit of a tribe or a member of a tribe.

10 **SECTION 11.** 50.065 (5) of the statutes is amended to read:

11 50.065 (5) The department may license, certify, issue a certificate of approval
12 to, or register to operate an entity a person who otherwise may not be licensed,
13 certified, issued a certificate of approval, or registered for a reason specified in sub.
14 (4m) (a) 1. to 5., and an entity may employ, contract with, or permit to reside at the
15 entity a person who otherwise may not be employed, contracted with, or permitted
16 to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person
17 demonstrates to the department, or, in the case of an entity that is ~~located within the~~
18 ~~boundaries of a reservation~~ subject to rehabilitation reviews by a tribe under sub.
19 (5d) (c) or (d), to the person or body designated by the tribe under sub. (5d) (a) 3., by
20 clear and convincing evidence and in accordance with procedures established by the
21 department by rule, or by the tribe, that ~~he or she~~ the person has been rehabilitated.

22 **SECTION 12.** 50.065 (5d) (c) of the statutes is created to read:

23 50.065 (5d) (c) 1. Subject to subd. 2., a tribe whose rehabilitation plan has been
24 approved by the department may conduct reviews under sub. (5) with respect to all
25 entities on the tribe’s reservation or trust land.

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1 2. A tribe may request the department to grant the tribe the authority to
2 conduct rehabilitation reviews under sub. (5) with respect to some, but not all,
3 entities on the tribe's reservation or trust land. The department shall grant that
4 authority if the criteria established by rule under sub. (7) (bm) are satisfied.

5 **SECTION 13.** 50.065 (5d) (d) of the statutes is created to read:

6 50.065 (**5d**) (d) A tribe whose rehabilitation plan has been approved by the
7 department may request the department to grant the tribe the authority to conduct
8 rehabilitation reviews under sub. (5) with respect to an entity located outside the
9 boundaries of the tribe's reservation or trust land that is owned or operated by the
10 tribe or a tribal enterprise. The department shall evaluate the tribe's request,
11 considering factors such as proximity of the tribal entity to the reservation or trust
12 land and the population to be served by the tribal entity. If the department
13 determines that the conduct of rehabilitation reviews by the tribe with respect to the
14 tribal entity is rationally related to the protection of clients, the department may
15 authorize the tribe to conduct rehabilitation reviews with respect to the tribal entity.

16 **SECTION 14.** 50.065 (7) (bm) of the statutes is created to read:

17 50.065 (**7**) (bm) Establish by rule criteria for the department to use in
18 determining whether a tribe whose plan is approved under sub. (5d) (b) may be
19 authorized to conduct rehabilitation reviews under sub. (5) for some, but not all,
20 entities on the tribe's reservation or trust land.

21

(END)