



1995 SENATE BILL 230

June 1, 1995 - Introduced by Senators LEEAN, ELLIS and RUDE, by request of Governor Tommy G. Thompson. Referred to Committee on Judiciary.

1 **AN ACT to amend** 48.22 (7), 48.60 (1), 48.625 (1), 48.65 (1), 48.68 (1) and 48.75
2 (1); and **to create** 48.22 (7m), 48.60 (1m), 48.625 (1m), 48.65 (1m), 48.68 (1m),
3 48.715 (2) (bm) and 48.75 (1m) of the statutes; **relating to:** criminal
4 background investigations of certain persons who provide care for children.

Analysis by the Legislative Reference Bureau

Under current law, the department of health and social services (DHSS) investigates and licenses child welfare agencies, group homes, shelter care facilities and day care centers. Currently, DHSS, a county department of human services or social services (county department) and, if licensed to do so by DHSS, a child welfare agency investigate and license foster homes and treatment foster homes. This bill requires that, as part of the preclicensing investigation of a child welfare agency, group home, shelter care facility or day care center, DHSS, with the assistance of the department of justice (DOJ), conduct a background investigation of the applicant for the license. If the applicant is applying for a license to operate a day care center for 4 to 8 children, DHSS must also conduct a background investigation of the employes and prospective employes of the day care center. If the applicant is applying for a license to operate a foster home, DHSS must also conduct a background investigation of all adult residents of the foster home. The bill also requires a shelter care facility, child welfare agency, group home or day care center that cares for 9 or more children to conduct a background investigation of all employes and prospective employes as a condition of initial licensure or license renewal. Under the bill, if the person being investigated is a nonresident, or at any time within the preceding 5 years has been a nonresident, or if the person conducting the investigation has a reasonable basis for further investigation of the person, the person conducting the investigation must require the person to be photographed and fingerprinted and DOJ may submit the fingerprints to the federal bureau of investigation (FBI) for the purpose of verifying the identity of the person fingerprinted and obtaining his or her arrest and conviction

record. DHSS may not issue a license to or renew the license of, and a shelter care facility, child welfare agency, group home or day care center may not employ, any person who has been convicted of a felony drug violation, who has had imposed on him or her an increased penalty for habitual criminality, for certain domestic abuse offenses, for use of a dangerous weapon, for use of a bulletproof garment, for concealing his or her identity or for a hate crime or, subject to certain exceptions, who has been convicted of a crime against life and bodily security, a crime against sexual morality or a crime against children. Similarly, DHSS may order a child welfare agency, group home, shelter care facility or day care center that employs a person who has been so convicted or so punished to terminate the employment of that person immediately on receipt of the order. The bill also requires DHSS, a county department or a child welfare agency to conduct the same background investigation of an applicant for a foster home or a treatment foster home license and to deny licensure to any applicant who has been so convicted or so punished.

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.** 48.22 (7) of the statutes is amended to read:

2 48.22 (7) No person may establish a shelter care facility without first obtaining
3 a license under s. 48.66 (1). To obtain a license under s. 48.66 (1) to operate a shelter
4 care facility, a person must meet the minimum requirements for a license established
5 by the department under s. 48.67 and conduct the background investigations
6 specified in sub. (7m).

7 **SECTION 2.** 48.22 (7m) of the statutes is created to read:

8 48.22 (7m) (a) Before applying for initial licensure or license renewal, the
9 applicant, with the assistance of the department of justice, shall conduct a
10 background investigation of each employe or prospective employe of the applicant.

11 (b) If the person being investigated under par. (a) is a nonresident, or if at any
12 time within the 5 years preceding the date of the investigation that person has been
13 a nonresident, or if the applicant determines that the person's employment, licensing

1 or state court records provide a reasonable basis for further investigation, the
2 applicant shall require the person to be photographed and fingerprinted on 2
3 fingerprint cards, each bearing a complete set of the person's fingerprints. The
4 department of justice may provide for the submission of the fingerprint cards to the
5 federal bureau of investigation for the purposes of verifying the identity of the person
6 fingerprinted and obtaining records of his or her criminal arrest and conviction.

7 (c) Upon request, a person being investigated under par. (a) shall provide the
8 applicant with all of the following information:

- 9 1. The person's name.
- 10 2. The person's social security number.
- 11 3. Other identifying information, including the person's birthdate, sex, race
12 and any identifying physical characteristics.

13 (d) An applicant may employ a person conditioned on the receipt of a
14 satisfactory background investigation. An applicant may not employ any person who
15 has been convicted of a violation of ch. 161 that is punishable as a felony, who has had
16 imposed on him or her a penalty specified in s. 939.62, 939.621, 939.63, 939.64,
17 939.641 or 939.645 or who has been convicted of a violation of ch. 940, 944 or 948,
18 other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, except
19 that an applicant may employ a person who has been convicted of a violation of s.
20 944.30, 944.31 or 944.33 if that violation occurred 20 years or more before the date
21 of the investigation.

22 (e) An applicant shall keep confidential all information received under this
23 subsection from the department of justice or the federal bureau of investigation.

24 **SECTION 3.** 48.60 (1) of the statutes is amended to read:

1 48.60 (1) No person may receive children, with or without transfer of legal
2 custody, to provide care and maintenance for 75 days in any consecutive 12 months'
3 period for 4 or more such children at any one time unless that person obtains a license
4 to operate a child welfare agency from the department. To obtain a license under this
5 subsection to operate a child welfare agency, a person must meet the minimum
6 requirements for a license established by the department under s. 48.67, conduct the
7 background investigations specified in sub. (1m) and pay the applicable license fee
8 under s. 48.615 (1) (a) or (b). A license issued under this subsection is valid for 2 years
9 after the date of issuance, unless sooner revoked or suspended.

10 **SECTION 4.** 48.60 (1m) of the statutes is created to read:

11 48.60 (1m) (a) Before applying for initial licensure or license renewal, the
12 applicant, with the assistance of the department of justice, shall conduct a
13 background investigation of each employe or prospective employe of the applicant.

14 (b) If the person being investigated under par. (a) is a nonresident, or if at any
15 time within the 5 years preceding the date of the investigation that person has been
16 a nonresident, or if the applicant determines that the person's employment, licensing
17 or state court records provide a reasonable basis for further investigation, the
18 applicant shall require the person to be photographed and fingerprinted on 2
19 fingerprint cards, each bearing a complete set of the person's fingerprints. The
20 department of justice may provide for the submission of the fingerprint cards to the
21 federal bureau of investigation for the purposes of verifying the identity of the person
22 fingerprinted and obtaining records of his or her criminal arrest and conviction.

23 (c) Upon request, a person being investigated under par. (a) shall provide the
24 applicant with all of the following information:

25 1. The person's name.

1 2. The person's social security number.

2 3. Other identifying information, including the person's birthdate, sex, race
3 and any identifying physical characteristics.

4 (d) An applicant may employ a person conditioned on the receipt of a
5 satisfactory background investigation. An applicant may not employ any person who
6 has been convicted of a violation of ch. 161 that is punishable as a felony, who has had
7 imposed on him or her a penalty specified in s. 939.62, 939.621, 939.63, 939.64,
8 939.641 or 939.645 or who has been convicted of a violation ch. 940, 944 or 948, other
9 than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, except that
10 an applicant may employ a person who has been convicted of a violation of s. 944.30,
11 944.31 or 944.33 if that violation occurred 20 years or more before the date of the
12 investigation.

13 (e) An applicant shall keep confidential all information received under this
14 subsection from the department of justice or the federal bureau of investigation.

15 **SECTION 5.** 48.625 (1) of the statutes is amended to read:

16 48.625 (1) Any person who receives, with or without transfer of legal custody,
17 5 to 8 children, to provide care and maintenance for those children shall obtain a
18 license to operate a group home from the department. To obtain a license under this
19 subsection to operate a group home, a person must meet the minimum requirements
20 for a license established by the department under s. 48.67, conduct the background
21 investigations specified in sub. (1m) and pay the license fee under sub. (2). A license
22 issued under this subsection is valid for 2 years after the date of issuance, unless
23 sooner revoked or suspended.

24 **SECTION 6.** 48.625 (1m) of the statutes is created to read:

1 48.625 **(1m)** (a) Before applying for initial licensure or license renewal, the
2 applicant, with the assistance of the department of justice, shall conduct a
3 background investigation of each employe or prospective employe of the applicant.

4 (b) If the person being investigated under par. (a) is a nonresident, or if at any
5 time within the 5 years preceding the date of the investigation that person has been
6 a nonresident, or if the applicant determines that the person's employment, licensing
7 or state court records provide a reasonable basis for further investigation, the
8 applicant shall require the person to be photographed and fingerprinted on 2
9 fingerprint cards, each bearing a complete set of the person's fingerprints. The
10 department of justice may provide for the submission of the fingerprint cards to the
11 federal bureau of investigation for the purposes of verifying the identity of the person
12 fingerprinted and obtaining records of his or her criminal arrest and conviction.

13 (c) Upon request, a person being investigated under par. (a) shall provide the
14 applicant with all of the following information:

15 1. The person's name.

16 2. The person's social security number.

17 3. Other identifying information, including the person's birthdate, sex, race
18 and any identifying physical characteristics.

19 (d) An applicant may employ a person conditioned on the receipt of a
20 satisfactory background investigation. An applicant may not employ any person who
21 has been convicted of a violation of ch. 161 that is punishable as a felony, who has had
22 imposed on him or her a penalty specified in s. 939.62, 939.621, 939.63, 939.64,
23 939.641 or 939.645 or who has been convicted of a violation of ch. 940, 944 or 948,
24 other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, except
25 that an applicant may employ a person who has been convicted of a violation of s.

1 944.30, 944.31 or 944.33 if that violation occurred 20 years or more before the date
2 of the investigation.

3 (e) An applicant shall keep confidential all information received under this
4 subsection from the department of justice or the federal bureau of investigation.

5 **SECTION 7.** 48.65 (1) of the statutes is amended to read:

6 48.65 (1) No person may for compensation provide care and supervision for 4
7 or more children under the age of 7 for less than 24 hours a day unless that person
8 obtains a license to operate a day care center from the department. To obtain a
9 license under this subsection to operate a day care center, a person must meet the
10 minimum requirements for a license established by the department under s. 48.67,
11 conduct the background investigations specified in sub. (1m), if applicable, and pay
12 the license fee under sub. (3). A license issued under this subsection is valid for 2
13 years after the date of issuance, unless sooner revoked or suspended.

14 **SECTION 8.** 48.65 (1m) of the statutes is created to read:

15 48.65 (1m) (a) Before applying for initial licensure or license renewal, an
16 applicant for a license to provide care and supervision for 9 or more children, with
17 the assistance of the department of justice, shall conduct a background investigation
18 of each employe or prospective employe of the applicant.

19 (b) If the person being investigated under par. (a) is a nonresident, or if at any
20 time within the 5 years preceding the date of the investigation that person has been
21 a nonresident, or if the applicant determines that the person's employment, licensing
22 or state court records provide a reasonable basis for further investigation, the
23 applicant shall require the person to be photographed and fingerprinted on 2
24 fingerprint cards, each bearing a complete set of the person's fingerprints. The
25 department of justice may provide for the submission of the fingerprint cards to the

1 federal bureau of investigation for the purposes of verifying the identity of the person
2 fingerprinted and obtaining records of his or her criminal arrest and conviction.

3 (c) Upon request, a person being investigated under par. (a) shall provide the
4 applicant with all of the following information:

5 1. The person's name.

6 2. The person's social security number.

7 3. Other identifying information, including the person's birthdate, sex, race
8 and any identifying physical characteristics.

9 (d) An applicant may employ a person conditioned on the receipt of a
10 satisfactory background investigation. An applicant may not employ any person who
11 has been convicted of a violation of ch. 161 that is punishable as a felony, who has had
12 imposed on him or her a penalty specified in s. 939.62, 939.621, 939.63, 939.64,
13 939.641 or 939.645 or who has been convicted of a violation of ch. 940, 944 or 948,
14 other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, except
15 that an applicant may employ a person who has been convicted of a violation of s.
16 944.30, 944.31 or 944.33 if that violation occurred 20 years or more before the date
17 of the investigation.

18 (e) An applicant shall keep confidential all information received under this
19 subsection from the department of justice or the federal bureau of investigation.

20 **SECTION 9.** 48.68 (1) of the statutes is amended to read:

21 48.68 (1) After receipt of an application for a license, the department shall
22 investigate to determine if the applicant meets the minimum requirements for a
23 license adopted by the department under s. 48.67. The investigation shall include
24 a background investigation as provided in sub. (1m). In determining whether to
25 issue a license, the department may consider any action by the applicant, or by an

1 employe of the applicant, that constitutes a substantial failure by the applicant or
2 employe to protect and promote the health, safety and welfare of a child. Upon
3 satisfactory completion of this investigation and payment of the fee required under
4 s. 48.615 (1) (a) or (b), 48.625 (2) (a) or 48.65 (3) (a), the department shall issue a
5 license under s. 48.66 (1) or, if applicable, a probationary license under s. 48.69. At
6 the time of initial licensure and license renewal, the department shall provide a
7 foster home licensee with written information relating to the age-related monthly
8 foster care rates and supplemental payments specified in s. ~~49.19 (12)~~ 48.62 (4),
9 including payment amounts, eligibility requirements for supplemental payments
10 and the procedures for applying for supplemental payments.

11 **SECTION 10.** 48.68 (1m) of the statutes is created to read:

12 48.68 **(1m)** (a) After receipt of an application for a license, the department, with
13 the assistance of the department of justice, shall conduct a background investigation
14 of the applicant. If the applicant is applying for a license to operate a day care center
15 that provides care and supervision for 4 to 8 children, the department shall also
16 conduct a background investigation of each employe and prospective employe of the
17 applicant. If the applicant is applying for a license to operate a foster home or a
18 treatment foster home, the department shall also conduct a background
19 investigation of each adult who resides with the applicant.

20 (b) If the person being investigated under par. (a) is a nonresident, or if at any
21 time within the 5 years preceding the date of the investigation that person has been
22 a nonresident, or if the department determines that the person's employment,
23 licensing or state court records provide a reasonable basis for further investigation,
24 the department shall require the person to be photographed and fingerprinted on 2
25 fingerprint cards, each bearing a complete set of the person's fingerprints. The

1 department of justice may provide for the submission of the fingerprint cards to the
2 federal bureau of investigation for the purposes of verifying the identity of the person
3 fingerprinted and obtaining records of his or her criminal arrest and conviction.

4 (c) Upon request, a person being investigated under par. (a) shall provide the
5 department with all of the following information:

6 1. The person's name.

7 2. The person's social security number.

8 3. Other identifying information, including the person's birthdate, sex, race
9 and any identifying physical characteristics.

10 (d) The department may issue or renew a license conditioned on the receipt of
11 a satisfactory background investigation. The department may not issue a license to
12 or renew the license of any person who has been convicted of a violation of ch. 161
13 that is punishable as a felony, who has had imposed on him or her a penalty specified
14 in s. 939.62, 939.621, 939.63, 939.64, 939.641 or 939.645 or who has been convicted
15 of a violation of ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34,
16 944.36, 948.45, 948.63 or 948.70, except that the department may issue a license to
17 or renew the license of a person who has been convicted of a violation of s. 944.30,
18 944.31 or 944.33 if the violation occurred 20 years or more before the date of the
19 investigation.

20 (e) The department shall keep confidential all information received under this
21 subsection from the department of justice or the federal bureau of investigation,
22 except that the department may disclose any information obtained under this
23 subsection to a person who is conducting a background investigation under s. 48.22
24 (7m), 48.60 (1m), 48.625 (1m), 48.65 (1m), 48.75 (1m) or 118.19 (10). Such
25 information is not subject to inspection or copying under s. 19.35.

1 (f) The department may charge a fee for conducting a background investigation
2 under this subsection. The fee may not exceed the reasonable cost of conducting the
3 investigation.

4 **SECTION 11.** 48.715 (2) (bm) of the statutes is created to read:

5 48.715 (2) (bm) That a person who employs a person who has been convicted
6 of a violation of ch. 161 that is punishable as a felony, who has had imposed on him
7 or her a penalty specified in s. 939.62, 939.621, 939.63, 939.64, 939.641 or 939.645
8 or who has been convicted of a violation of ch. 940, 944 or 948, other than s. 940.291,
9 940.34, 944.36, 948.45, 948.63 or 948.70, terminate the employment of that person
10 immediately on receipt of the order. This paragraph includes employment of a person
11 in any capacity, whether as an officer, director, agent or employe.

12 **SECTION 12.** 48.75 (1) of the statutes is amended to read:

13 48.75 (1) Child welfare agencies, if licensed to do so by the department, and
14 county departments may license foster homes and treatment foster homes. After
15 receipt of an application for a license, the child welfare agency or county department
16 shall investigate to determine if the applicant meets the minimum requirements for
17 a license under the rules promulgated by the department under s. 48.67 governing
18 the licensing of foster homes and treatment foster homes. The investigation shall
19 include a background investigation as provided in sub. (1m). A foster home or
20 treatment foster home license shall be issued for a term not to exceed 2 years from
21 the date of issuance, is not transferable and may be revoked by the child welfare
22 agency or by the county department because the licensee has substantially and
23 intentionally violated any provision of this chapter or of the rules of the department
24 promulgated pursuant to s. 48.67 or because the licensee fails to meet the minimum

1 requirements for a license. The licensee shall be given written notice of any
2 revocation and the grounds therefor.

3 **SECTION 13.** 48.75 (1m) of the statutes is created to read:

4 48.75 **(1m)** (a) After receipt of an application for a license, the child welfare
5 agency or county department, with the assistance of the department of justice, shall
6 conduct a background investigation of the applicant and of each adult who resides
7 with the applicant.

8 (b) If the person being investigated under par. (a) is a nonresident, or at any
9 time within the 5 years preceding the date of the application has been a nonresident,
10 or if the child welfare agency or county department determines that the person's
11 employment, licensing or state court records provide a reasonable basis for further
12 investigation, the child welfare agency or county department shall require the
13 person to be photographed and fingerprinted on 2 fingerprint cards, each bearing a
14 complete set of the person's fingerprints. The department of justice may provide for
15 the submission of the fingerprint cards to the federal bureau of investigation for the
16 purposes of verifying the identity of the person fingerprinted and obtaining records
17 of his or her criminal arrest and conviction.

18 (c) Upon request, a person being investigated under par. (a) shall provide the
19 child welfare agency or county department with all of the following information:

- 20 1. The person's name.
- 21 2. The person's social security number.
- 22 3. Other identifying information, including the person's birthdate, sex, race
23 and any identifying physical characteristics.

24 (d) The child welfare agency or county department may issue or renew a license
25 or permit conditioned upon the receipt of a satisfactory background investigation.

1 The child welfare agency or county department may not issue a license to or renew
2 the license of any person who has been convicted of a violation of ch. 161 that is
3 punishable as a felony or of a violation of ch. 940, 944 or 948 or who has had imposed
4 on him or her a penalty specified in s. 939.62, 939.621, 939.63, 939.64, 939.641 or
5 939.645.

6 (e) The child welfare agency or county department shall keep confidential all
7 information received under this subsection from the department of justice or the
8 federal bureau of investigation, except that the child welfare agency may disclose
9 any information obtained under this subsection to any other child welfare agency or
10 county department conducting an investigation under this subsection or to any
11 person conducting an investigation under s. 48.22 (7m), 48.60 (1m), 48.625 (1m),
12 48.65 (1m), 48.68 (1m) or 118.19 (10). Such information is not subject to inspection
13 or copying under s. 19.35.

14 (f) The child welfare agency or county department may charge a fee for
15 conducting a background investigation under this subsection. The fee may not
16 exceed the reasonable cost of conducting the investigation.

17 **SECTION 14. Initial applicability; health and social services.**

18 (1) CRIMINAL BACKGROUND INVESTIGATIONS. The treatment of sections 48.22 (7)
19 and (7m), 48.60 (1) and (1m), 48.625 (1) and (1m), 48.65 (1) and (1m), 48.68 (1) and
20 (1m) and 48.75 (1) and (1m) of the statutes first applies to applications to operate a
21 child welfare agency, group home, shelter care facility, day care center, foster home
22 or treatment foster home received on the effective date of this subsection.

