1999 DRAFTING REQUEST

Assembly Amendment (AA-AB133)

Received: **06/5/99**

Received By: **yacketa**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Simpson**

This file may be shown to any legislator: **NO**

Drafter: **yacketa**

May Contact:

Alt. Drafters:

Subject: **Public Assistance - Wis works**

Extra Copies:

Pre Topic:

LFB:.....Simpson -

Topic:

Eliminate 60-day residency requirement

Instructions:

See Attached;

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	yacketa 06/7/99	jgeller 06/7/99	martykr 06/7/99	_____ _____	lrb_docadmin 06/7/99		

FE Sent For:

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/?	yacketa	1 6/7 jcg Km 6/7		JA 6/7 Km 6/7			

FE Sent For:

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23. LFB Paper #1089. Alternative 2a. Increase funding for child care start-up and expansion grants by $33,600 FED annually to reflect historical expenditures.

24. LFB Paper #1089. Alternative 2b. Decrease funding for child care quality improvement grants by $300,000 FED annually to reflect expenditures in recent years.

25. LFB Paper #1089. Alternative 2c. Decrease funding for the local child care resource and referral (CCRR) agencies by $300,000 FED annually to reflect recent changes in activity.

26. LFB Paper #1089. Alternative 3b. Eliminate the local child care resource and referral grant program and decrease funding by $3,400,000 FED annually. Instead, provide $1,000,000 FED annually for grants to address problems associated with child care for sick children.

27. LFB Paper #1089. Alternative 3d. Eliminate the revolving loan program for child care start-up and expansion and decrease funding by $3,200,000 FED in 1999-00.

28. LFB Paper #1089. Alternative 3e. Eliminate the child care careers education program and decrease funding by $1,000,000 FED in 1999-00 and $2,500,000 FED in 2000-01.

29. LFB Paper #1090. Alternative 2. Maintain current law regarding local child care administration.

30. LFB Paper #1091. Alternative 2. Delete the Governor's recommendation and allow the child care careers coordinator position to terminate on December 31, 1999. Reduce funding by $22,800 FED in 1999-00 and $45,600 FED in 2000-01 to reflect the elimination of the position.

31. LFB Paper #1092. Alternative 2. Eliminate the Governor's provision. Instead, modify current law relating to partial community service job (CSJ) placements by specifying in the statutes that the monthly grant amount would be prorated as follows: (a) for an assignment of work activities up to 10 hours per week, the grant amount would be prorated by 1/3; (b) for an assignment of work activities of 10 to 15 hours per week, by 1/2; (c) for an assignment of work activities of 15 to 20 hours per week, by 2/3; and (d) for an assignment of work activities in excess of 20 hours per week, the grant amount would be $673. Specify that the grant amount would be based on the financial employment planner's determination of the appropriate number of hours for a participant at the time of the application process or a regularly-scheduled review. Require DWD to implement the partial CSJ provisions within three months after the bill's general effective date.

32. LFB Paper #1093. Delete the Governor's recommendation and repeal the current provisions regarding the wage-paying community service job pilot program in Milwaukee County.

33. LFB Paper #1095. Alternative 2. Modify the bill to eliminate the current 60-day residency requirement, and instead specify that, in order to be eligible for a W-2 subsidized employment position or job access loan, an individual must be a resident of Wisconsin. Under this option, if the Department determines through monitoring of the program and with specific data that

elimination of this provision has a significant fiscal impact, it could request additional funding under s. 13.10.

34. LFB Paper #1096. Alternative A1 -- Modification. Reduce funding budgeted in DHFS for kinship care benefits by $2,326,500 PR in 1999-00 and $502,400 PR in 2000-01 and provide a corresponding reduction in federal TANF funds budgeted in DWD to reflect a reestimate of the cost of kinship care benefits in the next biennium.

35. LFB Paper #1096. Alternative D1. Delete $1,586,000 GPR and $2,200,000 FED from base funding for kinship foster care and instead budget these funds in community aids or the DHFS Bureau of Milwaukee Child Welfare, as appropriate, and delete appropriation language regarding kinship foster care to reflect that counties, or DHFS in Milwaukee County, would make payments to foster parents related to the children in their care or providing care to teenage parents from community aids or their out-of-home care budget, rather than a separate kinship foster care allocation.

GMM

36. LFB paper #1096. Delete all of the Governor's recommended statutory changes relating to kinship care benefits. Instead, provide $500,000 PR in 1999-00 in DHFS and provide a corresponding increase in federal TANF funds budgeted in DWD which would be used by DHFS to supplement kinship care allocations in order to prevent the need to place eligible kinship care relatives on a waiting list if payments for kinship care exceed the amount allocated. Specify that DHFS could carry any of the unused funding from this provision to 2000-01.

Specify that a county may request supplemental funding from DHFS if payments for kinship care in that county exceed that county's allocation. Require DHFS to supplement the county's allocation if DHFS verifies the need for the supplemental allocation to eliminate kinship care waiting lists. This motion would not preclude DHFS from reobligating funds from other counties on a voluntary basis in order to address waiting lists. Specify that this same criteria applies to a request for additional funding from the DHFS Bureau of Milwaukee Child Welfare, which is responsible for making kinship care payments in Milwaukee County.

Further, if DHFS exhausts funding from the $500,000 that would be provided under this provision, require DHFS to submit a request for supplemental funding for kinship care benefits under s. 16.515 of the statutes.

37. LFB Paper #1097. Require DHFS to reallocate 1.0 GPR vacant position and corresponding funding to provide increased oversight of the kinship care program. This position would provide program oversight and monitoring, technical assistance to counties in administering kinship care, serve as the liaison to DWD and the DHFS Bureau of Milwaukee Child Welfare (which administers kinship care in Milwaukee County) and develop policies and procedures related to kinship care. GPR funding used to support this position could be counted towards the state's maintenance-of-effort requirement under TANF.

allocation

38. LFB Paper #1098. Alternative 2. Modify the Governor's recommendations to provide $4,559,200 PR in 1999-00 and $6,838,800 PR in 2000-01 and specify that the monthly SSI caretaker supplement payment for the first child in the home would be $250, rather than $150.

TAY
60547

Legislative Fiscal Bureau
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June 1, 1999 Joint Committee on Finance Paper #1095

TANF

Residency Requirement Under the Wisconsin Works Program (DWD -- Economic Support and Child Care)

CURRENT LAW

Under the 1996 federal welfare reform legislation that created the temporary assistance to needy families (TANF) program, states must submit plans to the federal government describing how the state's TANF program will be implemented. Among other items, the state plan must set forth objective criteria for the determination of eligibility for assistance. The state plan also must indicate whether the state intends to treat families moving into the state differently than other families and, if so, how it intends to treat such families. Federal law also specifies that states may apply program rules and benefit levels of the state from which a family moved if the family has lived in the new state of residence for fewer than 12 months.

Under state law, in order to be eligible for a subsidized employment position (trial job, community service job or transitional placement) or job access loan under the Wisconsin Works (W-2) program, an individual must have resided in Wisconsin for at least 60 consecutive days prior to applying for assistance. Unless the individual is a migrant worker, the individual also must have demonstrated an intent to continue to reside in Wisconsin.

GOVERNOR

No provision.

DISCUSSION POINTS

1. On May 17, 1999, the Supreme Court of the United States in *Saenz v. Roe* ruled that California's two-tier system of benefits provided under its TANF program violated the Fourteenth

Amendment to the U.S. Constitution. Generally, under California's law, individuals who resided in California for fewer than 12 months were eligible for benefits not to exceed a maximum benefit payment equal to the amount that would have been received by the family from the state of prior residence, or California's benefit amount, whichever was lower.

2. The Supreme Court based its decision that California's law is unconstitutional on the premise that the law violates a citizen's right to travel from one state to another. In particular, the Court noted, the law violated the right of travelers who elect to become permanent residents to be treated like other citizens of the state, and to enjoy the same privileges and immunities enjoyed by other residents. In addition, the Court held that the Fourteenth Amendment "expressly equates citizenship with residence and does not tolerate a hierarchy of subclasses of similarly situated citizens based on the location of their prior residences."

3. Furthermore, the Court concluded that California's claim that the two-tier benefit system was designed to save public funds was not sufficient to justify the discriminatory manner in which the state sought to save money. The Court also concluded that Congress did not have the authority to permit states to violate the Fourteenth Amendment. Accordingly, the provisions of the 1996 federal welfare reform legislation that authorize states to enact two-tier benefit systems violate Constitutional provisions.

4. As noted, current state law in Wisconsin provides that an individual is eligible for a W-2 employment position and job access loan only if the individual has resided in the state for at least 60 consecutive days prior to applying for an employment position or job access loan. Unless the person is a migrant worker, he or she also must demonstrate an intent to continue to reside in the state.

5. The Supreme Court decision in the California case did not specifically address such a residency requirement. The Legislative Council has provided this office with an initial review of the *Saenz* case and its applicability to Wisconsin's residency requirement, which is attached to this paper. According to the Legislative Council, the law at issue in the *Saenz* case is different from Wisconsin's law in at least three ways. First, the California law treated new residents differently for 12 months, while the Wisconsin law is limited to 60 days. Second, the California law created numerous sub-classes of individuals who received various benefit levels depending upon their prior state of residence. Wisconsin's law creates two distinct groups: individuals who have resided more than 60 days in the state, and those who have resided fewer than 60 days. Finally, the California law provided lower benefits to new residents, while Wisconsin's law denies eligibility for a W-2 employment position or job access loan.

6. However, despite these differences, according the Legislative Council, it appears that the rationale used by the Court in its decision in the *Saenz* case is broad enough to apply to the Wisconsin statute. Wisconsin's law creates a degree of citizenship based on length of residence which the Court held is prohibited by the Fourteenth Amendment. Accordingly, if challenged in a court of law, it is probable that a court would find that the law discriminates against newly arrived residents in violation of the Fourteenth Amendment to the U.S. Constitution and would require the

state to show that the statute furthers a compelling governmental interest. In the California case, the Court ruled that saving public funds, discouraging interstate travel, or recognizing that newly arrived residents have different tax contributions are not sufficient justifications.

7. In order to make state law consistent with the *Saenz* decision, the Committee could eliminate the W-2 residency requirement.

8. Another option would be to specify that a person must be a resident of the state in order to be eligible for a W-2 subsidized employment position or job access loan, without specifying the length of time that a person must have been in the state. The Supreme Court ruling in the *Saenz* case addressed the issue of a state treating certain residents in a different manner than other residents, as opposed to the treatment of non-residents in comparison with residents. Wisconsin's 60-day residency requirement would likely be found unconstitutional because it treats certain residents (those who have been in the state for less than 60 days) differently than other residents (those who have lived in the state for more than 60 days). Under this alternative, the state would make a distinction between individuals who intend to remain in the state, and those who do not have such an intention. Residence is currently defined in the public assistance statutes as "the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is *prima facie* evidence of intent to remain." Under this definition, if it is specified that a person must be a resident of the state for eligibility purposes, the person would have to demonstrate that he or she intended to continue to reside in the state, as could be evidenced by various documents or other indicators. Under the current W-2 manual, the W-2 agency is required to use the best information available in determining residency, including bills sent to the person's address and statements from landlords.

9. It is unclear if these alternatives would have a significant fiscal effect. Currently, approximately 500 to 600 persons apply for the W-2 program in a month. However, no data is available that would indicate how many are determined ineligible for the program due to the residency requirement. Furthermore, even if additional persons apply or are found eligible for the program, a subsidized benefit may or may not be provided to them. Therefore, if the Department determines that elimination of the 60-day residency requirement has a significant fiscal impact, it could request additional funding under s. 13.10. However, the Department would have to monitor the elimination of this provision and demonstrate that subsidized employment benefits are being provided to persons who would otherwise have been ineligible for the program had the 60-day residency not been eliminated.

10. An additional consideration is whether penalties would be imposed on the state if a court found that the current residency requirement is unconstitutional. The state's potential liability would depend upon the type of lawsuit that is filed. A person bringing action could seek a prohibition on enforcement of the Wisconsin law, and could possibly seek retroactive benefits. Also, it is possible that if the state continues to enforce a law that is unconstitutional, the state exposes itself to liability under federal civil rights laws.

11. It should also be noted that Wisconsin conducted a pilot program from July, 1994, to

September, 1997, that established a two-tier benefit system in Kenosha, Milwaukee, Racine and Rock Counties. The project included persons found eligible for the former aid to families with dependent children (AFDC) program who had not previously resided in Wisconsin for at least six months and either: (a) applied for benefits within 90 days after moving to Wisconsin; or (b) applied for benefits more than 90 days but less than 180 days after moving to Wisconsin and were unable to demonstrate to the county agency's satisfaction that they were employed for at least 13 weeks after moving to the state. A person who met these criteria received an AFDC grant for the first six months of residency that was calculated on the basis of the benefits the family would have received in the state in which the family most recently resided. The grant could have been higher or lower than the amount provided under Wisconsin law, depending on the benefit level in the other state.

12. The Supreme Court did not address the issue of retroactive benefit payments under the *Saenz* case. The Court simply required California to prohibit the implementation of the two-tier benefit system. In addition, Wisconsin's two-tier system differed from the California law in that it allowed for higher benefits for new arrivals, depending upon the benefit level in the family's prior state of residence. Because of these factors, it is unclear if the state would be liable for retroactive benefit payments if a lawsuit was brought against the state under the former two-tier system. Any estimate of whether damages would be sought, and the amount of any damages, would be speculative.

ALTERNATIVES

1. Modify the bill to eliminate the eligibility requirement that specifies that an individual must have resided in Wisconsin for at least 60 consecutive days prior to applying for assistance and (unless the individual is a migrant worker) demonstrated an intent to continue to reside in Wisconsin. Under this alternative, if the Department determines through monitoring of the program and with specific data that elimination of this provision has a significant fiscal impact, it could request additional funding under s. 13.10.

2. Modify the bill to eliminate the current 60-day residency requirement, and instead specify that, in order to be eligible for a W-2 subsidized employment position or job access loan, an individual must be a resident of Wisconsin. Under this option, if the Department determines through monitoring of the program and with specific data that elimination of this provision has a significant fiscal impact, it could request additional funding under s. 13.10.

3. Maintain current law.

Prepared by: Joanne T. Simpson

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

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DATE: May 24, 1999

TO: JOANNE SIMPSON, FISCAL ANALYST, LEGISLATIVE FISCAL BUREAU

FROM: Robert J. Conlin, Senior Staff Attorney

SUBJECT: Effect of Recent U.S. Supreme Court Case on W-2 Residency Requirement

You requested a memorandum discussing the effect of a recent U.S. Supreme Court case on Wisconsin's 60-day residency requirement for eligibility for Wisconsin Works (W-2) employment positions. This memorandum describes that case, describes Wisconsin's 60-day residency requirement and provides an analysis of the possible effects of that case on Wisconsin's residency requirement.

1. Saenz v. Roe

On May 17, 1999, the U.S. Supreme Court, in *Saenz v. Roe*, __ U.S. __, 1999 U.S. LEXIS 3174 (1999), concluded that California's "two-tier" welfare benefits system violated the U.S. Constitution's Fourteenth Amendment and held that Congress could not authorize states to violate the Fourteenth Amendment. The issue before the Supreme Court was whether California's welfare law, which provided different benefit levels based on the recipient's length of residence in the state, was unconstitutional. Generally, under California's welfare law, individuals who resided in California for fewer than 12 months were eligible for welfare benefits equal to the lesser of: (a) California's benefits; or (b) the benefits they would have been eligible for in their prior state of residence.

The Court began its analysis by noting that the case involved a citizen's right to travel from one state to another [*Saenz v. Roe*, __ U.S. __, 1999 LEXIS at 16.]. The Court explained that the constitutional right to travel has at least three components:

> It protects the right of the citizen of one state to enter and to leave another state, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second state, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that state. [*Saenz* at 19.]

The Court concluded that it was the third element, the right of travelers who elect to become permanent residents to be treated like other citizens of that state, that was implicated by California's two-tier welfare scheme. The Court characterized that right as the "right of the

newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same state." [*Id.* at 23.] The Court stated that this aspect of the right to travel is protected not only by the new arrival's status as a state citizen, but also by his or her status as a citizen of the United States under the Fourteenth Amendment to the U.S. Constitution. The Fourteenth Amendment provides in relevant part:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall bridge the privileges or immunities of citizens of the United States; . . . .

Because the third element of the right to travel is protected by the Fourteenth Amendment, the Court concluded that any infringement of the right is subject to the highest level of scrutiny: strict scrutiny. [*Id.* at 25-26]. Generally, when the Court applies strict scrutiny to a law, in order to be constitutionally valid, the law must further a compelling governmental interest and be narrowly tailored to achieve that interest. The Court found that California's law could not survive this level of scrutiny. The Court analyzed four principal lines of argument in striking down the law.

First, the Court held that California's two-tier welfare benefits scheme could not pass constitutional muster based on the argument that it affected a person's right to travel "only incidentally." The Court stated that because the right to travel embraces the citizen's right to be treated equally in his or her new state of residence, the discriminatory classification is itself a penalty. The "incidental" effect was irrelevant to the Court's inquiry. [*Id.* at 27]

Second, the Court concluded that the state's desire to save public funds by imposing the two-tier scheme was not sufficient to justify the discriminatory manner in which the state sought to save money. [*Id.* at 30.] The Court noted that the Fourteenth Amendment equates citizenship with residence and that the "clause does not provide for, and does not allow for, degrees of citizenship based on length of residence." [*Id.*, internal citations omitted.]

Third, the Court rejected any notion that a state could base its discriminatory actions on a policy that sought to distinguish between residents based on their tax contributions. It quoted a previous Supreme Court decision holding that to allow a state to discriminate between residents based on their length of residence to account for the difference in their relative tax contributions would:

> . . . logically permit the state to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the state to apportion all benefits and services according to the past tax contributions of its citizens. [*Id.* at 31, internal citations omitted.]

Finally, the Court concluded that Congress did not have the authority to permit states to violate the Fourteenth Amendment. [*Id.* at 32.] Accordingly, those provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) which authorize

states to enact two-tier welfare benefit schemes like California's did not save the California law from its constitutional deficiencies.

Accordingly, the Court concluded that the justifications put forth by California for its two-tier welfare scheme were not sufficient to justify discriminating between state residents.

2. Wisconsin Law

Section 49.145 (2) (d), Stats., provides that an individual is eligible for a W-2 employment position only if the individual meets, among other things, the following requirement:

> The individual has resided in this state for at least 60 consecutive days prior to applying under s. 49.141 (3) and, unless the person is a migrant worker, has demonstrated an intent to continue to reside in this state.

Thus, in Wisconsin, in order to be eligible for a W-2 employment position, an individual must have resided in this state for at least 60 consecutive days prior to applying and, unless the person is a migrant worker, demonstrate an intent to continue to reside in the state.

3. Analysis

It should be noted that the Court in *Saenz* did not specifically address a residency requirement like Wisconsin's 60-day residency requirement. The law at issue in the *Saenz* case was different on its face from the Wisconsin statute cited above in at least three ways. First, the California law treated new residents differently for 12 months. Wisconsin treats new residents differently for only 60 days. Second, the California law, in essence, created numerous subclasses of individuals who were treated differently because new residents' benefits were tied to the benefits those individuals received in other states. Wisconsin's law creates two classes: individuals who have resided in the state for more than 60 days and those that have resided in Wisconsin for fewer than 60 days. Finally, the California scheme involved the provision of lower benefits to new residents. Wisconsin's law denies eligibility for an employment position benefit. However, given the breadth of the constitutional principles at issue in *Saenz*, and the Court's treatment of them, it appears that the dissimilarities between Wisconsin's residency requirement and the two-tier benefit law in California may not make a difference if Wisconsin's law were to be challenged.

It should also be emphasized that the decision in *Saenz* involved a law that made distinctions between ***residents***. It did not address laws that make distinctions between residents and nonresidents.

With respect to residents of Wisconsin, Wisconsin's law makes a distinction between persons who have resided in the state for less than 60 days and persons who have resided in the state for more than 60 days. Applying the rationale of the *Saenz* decision, a compelling case can be made that the same "travel rights" that were implicated in *Saenz* are implicated by the Wisconsin residency requirement, i.e., a new arrival who has taken up residence in the state faces discrimination based on his or her status as a new arrival. As the Court noted in *Saenz*,

"Since the right to travel embraces the citizen's right to be treated equally in her new state of residence, the discriminatory classification is itself a penalty." [*Saenz* at 30.] As applied to a person who has resided in Wisconsin for less than 60 days, the Wisconsin statute creates a degree of citizenship based on length of residence which, according to *Saenz*, is prohibited by the Fourteenth Amendment.

The distinction between the California law and the Wisconsin law may become relevant in at least two possible ways in a constitutional challenge to Wisconsin's law. First, it might be argued that Wisconsin's requirement that a person reside in this state for 60 days and show an intent to continue to reside in this state is nothing more than a test of residency. In other words, a person, under this rationale, is not considered a resident until he or she has been in this state for 60 days and shows a continued intent to reside here. Thus, the argument could be made that Wisconsin's law does not create classifications of residents and, therefore, the rationale of *Saenz* does not apply. However, this argument is weakened by at least two elements of Wisconsin's law.

First, the statute which contains the 60-day requirement provides that a person is not eligible until he or she "has resided" in the state for at least 60 days. This language seems to recognize that the person is a resident. Second, s. 49.001 (6), Stats., which provides definitions applicable to public assistance programs, including the W-2 program, defines "residence" to mean the "voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is *prima facie* evidence of intent to remain." Since the residency requirement in s. 49.145 (2) (d), Stats., does not provide that the definition of "residence" in s. 49.001 (6) is inapplicable to it, it appears reasonable to conclude that the 60-day requirement does not define residency, but rather sets a limit on the length of residency required to qualify for W-2 employment position benefits.

The second argument that could be made that *Saenz* does not apply to Wisconsin' 60-day requirement is that the Wisconsin 60-day requirement does not penalize an individual's right to travel. This was the position taken by the Wisconsin Supreme Court in *Jones v. Milwaukee County*, 168 Wis. 2d 892, 485 N.W.2d 21 (1992). In that case, the Wisconsin Supreme Court concluded that a provision in Wisconsin's former general relief program that required a person to be a resident for 60 days to qualify for benefits did not operate to penalize an individual's right to travel. The court noted that while previous U.S. Supreme Court cases had found a one-year residency requirement unconstitutional, a 60-day waiting period was so "substantially less onerous . . . that it does not operate to penalize an individual's right to travel." [*Jones v. Milwaukee County*, 168 Wis. 2d at 485 N.W.2d at 26.]

The U.S. Supreme Court in *Saenz*, however, appears to have substantially weakened such reasoning when it concluded that the right to travel includes the right of persons who elect to become residents of a new state to be treated like other residents of that state. The Court said that because the case involved discrimination against citizens who have completed their interstate travel, the incidental effect on their right to travel was not an issue. Instead, the Court concluded that the discriminatory classification was itself a penalty. [*Saenz* at 27.] Thus, a strong case can be made that the length of time involved in creating classifications between residents does not matter in determining the constitutionality of a residency requirement under the rationale of *Saenz*.

Ultimately, if a court were to find that the Wisconsin residency requirement discriminates against new residents, the state would need to show a compelling governmental interest to justify the discrimination and that the method of achieving that interest is narrowly tailored to meet that end. Based on *Saenz*, it is clear that protection of the public fisc, the discouragement of interstate travel, or the recognition of the differing tax contributions of those involved are not sufficient justifications to save a statute which violates the Fourteenth Amendment. Thus, the burden would be on the state to show some compelling governmental interest to justify the 60-day residency requirement.

4. Conclusion

Although on its face, Wisconsin's 60-day residency requirement differs from the California law at issue in *Saenz*, it appears that the holding in *Saenz* is broad enough to apply to the Wisconsin statute so as to make those distinctions inconsequential as applied to residents of Wisconsin. Accordingly, if a resident who has resided in the state less than 60 days were to challenge the constitutionality of the state's 60-day residency requirement, it is probable that a court, applying the rationale of *Saenz*, would find that the provision discriminates against newly arrived residents in violation of the Fourteenth Amendment to the U.S. Constitution and, consequently, would require the state to show that the statute furthers a compelling governmental interest in order to pass constitutional muster. If the state were unable to make the requisite showing, the law would be invalidated.

If you have any additional questions on this matter, please feel free to contact me at the Legislative Council Staff offices.

RJC:wu:tlu;wu

State of Wisconsin
1999 – 2000 LEGISLATURE

LRBb0546/1
TAY...:...:....

LFB:.....Simpson – Eliminate 60–day residency requirement

FOR 1999–01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

At the locations indicated, amend the bill as follows:

1. Page 679, line 8: after that line insert:

"**SECTION 1224e.** 49.145 (2) (d) of the statutes is repealed and recreated to read:

49.145 **(2)** (d) The individual has residence in this state.".

(END)

State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0546/1
TAY:jlg:km

LFB:.....Simpson – Eliminate 60–day residency requirement

FOR 1999–01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

At the locations indicated, amend the bill as follows:

1. Page 680, line 8: after that line insert:

"**SECTION 1224e.** 49.145 (2) (d) of the statutes is repealed and recreated to read:

49.145 **(2)** (d) The individual has residence in this state.".

(END)