

2009 DRAFTING REQUEST

Bill

Received: **09/30/2009**

Received By: **gmalaise**

Wanted: **Today**

Identical to LRB:

For: **Tamara Grigsby (608) 266-0645**

By/Representing: **Cindy McGinnis**

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

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - day care**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Grigsby@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Child care provider background checks

Instructions:

Draft companion to -3492/2.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 09/30/2009	kfollett 09/30/2009		_____			S&L
/1			mduchek 09/30/2009	_____	lparisi 09/30/2009	cduerst 10/02/2009	

FE Sent For:

↳ At Intro.

<END>

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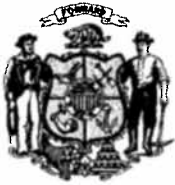
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/?	gmalaise	11EJF 9/30	MS 9/30	_____	_____	_____	_____

FE Sent For:

<END>



State of Wisconsin
2009 - 2010 LEGISLATURE
(Companion - No change)

-3578/1
LRB-3492/2
GMM:kjf:rs
w
stays

2009 BILL

In 9/30
today

see aff'd ✓

Reger

1 AN ACT *to renumber* 49.133 (3), 49.133 (4) and 120.13 (14); *to renumber and*
2 *amend* 49.133 (intro.), 49.133 (1) and 49.133 (2); *to amend* 20.435 (6) (jm),
3 48.685 (1) (c) 4., 48.685 (2) (am) (intro.), 48.685 (2) (am) 5., 48.685 (2) (b) 4.,
4 48.685 (2) (bb), 48.685 (2) (bd), 48.685 (2) (bg), 48.685 (2) (bm), 48.685 (3) (a),
5 48.685 (3) (b), 48.685 (3m), 48.685 (4m) (a) 1., 48.685 (4m) (ad), 48.685 (4m) (b)
6 1., 48.685 (5) (a), 48.685 (5c) (a), 48.685 (6) (am), 48.685 (6) (b) 2. and 48.685 (8);
7 *to repeal and recreate* 48.685 (4m) (ad) and 49.155 (7); and *to create* 48.651
8 (3), 48.685 (1) (c) 3m., 48.685 (2) (ar), 48.685 (2) (b) 2., 48.685 (3) (am), 48.685
9 (3) (bm), 48.685 (5) (br), 48.715 (4g), 49.133 (1m) (b), 49.133 (2m) (intro.) and
10 120.13 (14) (b) of the statutes; **relating to:** prohibiting a person who has been
11 convicted or adjudicated delinquent for committing certain serious crimes or
12 who is the subject of a pending criminal charge or delinquency petition for
13 committing a serious crime from being licensed, certified, or contracted with to
14 provide child care, from being employed or contracted as a caregiver of a child

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- 1 care provider, or from being permitted to reside at a premises where child care
2 is provided and making an appropriation.
-

Analysis by the Legislative Reference Bureau

Under current law, the Department of Children and Families (DCF) may not license a person to operate a day care center; DCF in a county having a population of 500,000 or more, a county department of human services or social services (county department), or an agency contracted by DCF to certify day care providers for purposes of reimbursement under the Wisconsin Works Program (contracted agency) may not certify a day care provider for those purposes; and a school board may not contract with a person to provide a day care program (collectively "child care provider") if the person has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime, as defined under current law, unless the person shows that he or she has been rehabilitated.

Similarly, a child care provider may not employ or contract with a caregiver or permit a nonclient resident to reside at a premises where child care is provided if the caregiver or nonclient resident has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime, as defined under current law, unless the caregiver or nonclient resident shows that he or she has been rehabilitated. Currently, "serious crime" is defined to include certain crimes against life or bodily security and certain crimes against children that are felonies.

This bill prohibits any person who has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing any of the following serious crimes or who is the subject of a pending criminal charge or delinquency petition alleging that the person has committed any of the following serious crimes on or after his or her 12th birthday from being licensed, certified, or contracted with to provide child care, from being employed or contracted as a caregiver of a child care provider, or from being permitted to be a nonclient resident of a premises where child care is provided and prohibits such a person from showing that he or she has been rehabilitated:

1. Any crime against children that is a felony, other than felony failure to pay child, spousal, or grandchild support or felony hazing.
2. Felony battery, if the victim is the spouse of the person.
3. First-degree or second-degree intentional or reckless homicide, felony murder, mayhem, felony sexual assault, reckless injury, taking hostages, kidnapping, felony endangering safety by use of a dangerous weapon, disarming a police officer, armed burglary, or armed robbery.
4. A violation of the background check law, if the violation involves the provision of false information to DCF, a county department, a contracted agency, a school board, or a child care provider.
5. An offense involving fraudulent activity as a participant in the Wisconsin Works Program, including as a recipient of a child care subsidy under that program, or as a recipient of aid to families with dependent children, medical assistance, food

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stamp benefits, supplemental security payments, payments for the support of children of supplemental security income recipients, or health care benefits under the Badger Care program.

6. Any drug or alcohol-related felony, felony battery, carjacking, or felony hazing, if committed not more than five years before the date of the background investigation.

7. Felony failure to pay child, spousal, or grandchild support, if committed not more than five years before the date of the background investigation, unless the person has paid all arrearages and is meeting his or her current support obligation.

Current law requires DCF, a county department, a contracting agency, or a school board, prior to licensing, certifying, or contracting with a child care provider and every four years after that, to conduct a criminal history search of the child care provider, of all nonclient residents of the premises where the child care is provided, and of all persons under 18 years of age who are caregivers of the child care provider and to obtain certain other information with respect to those individuals, specifically: 1) information from the client abuse registry maintained by the Department of Health Services (DHS); 2) information maintained by the Department of Regulation and Licensing regarding the individual's credentials; 3) information maintained by DCF regarding any substantiated reports of child abuse or neglect against the individual; and 4) information maintained by DHS regarding any denial of a license, certification, or contract to provide child care, of employment as a caregiver of a child care provider, or of permission to reside at a premises where child care is provided. Similarly, current law also requires a child care provider to conduct such a criminal history search and to obtain that information with respect to a caregiver 18 years of age or over prior to employing or contracting with the caregiver and every four years after that.

This bill requires DCF, a county department, a contracting agency, or a school board to conduct that criminal history search and to obtain that information with respect to a child care provider every three months after the child care provider is licensed, certified, or contracted with and to conduct that search and obtain that information with respect to a nonclient resident or caregiver under 18 years of age every year after the nonclient resident is permitted to reside at the premises or the caregiver is employed or contracted with. The bill also requires a child care provider to conduct that criminal history search and to obtain that information every year after a caregiver 18 years of age or over is employed or contracted with. In addition to conducting that criminal history search and obtaining that information, the bill requires DCF, a county department, a contracting agency, a school board, or an entity to obtain on those timetables information that is contained in the sex offender registry maintained by the Department of Corrections regarding whether the person has committed a sex offense that is a serious crime.

Under current law, DCF *may* revoke the license of a person to operate a day care center if the licensee or a person under the supervision of the licensee commits certain actions, including a repeated or substantial violation of a rule or order of DCF or of a condition of licensure or an action that directly threatens the health, safety, or welfare of any child under the care of the licensee. Similarly, under current law,

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DCF or a county department *may* refuse to pay a child care provider for child care provided under the Wisconsin Works Program if the child care provider, an employee of the child care provider, or a person living on the premises where child care is provided is convicted of a felony or misdemeanor that substantially relates to the care of children, is the subject of a pending charge that substantially relates to the care of children, or has been determined to have abused or neglected a child.

This bill *requires* all of the following:

1. DCF to revoke the license of a day care center; DCF in a county having a population of 500,000 or more, a county department, or a contracted agency to revoke the certification of a day care provider for purposes of reimbursement under the Wisconsin Works Program; and a school board to rescind the contract of the person to operate a day care program; if the person licensed to operate the day care center, the person certified as a child care provider, or the person contracting to provide the day care program is convicted of a serious crime or if a caregiver or nonclient resident of the day care center, child care provider, or day care program is convicted or adjudicated delinquent for committing a serious crime on or after his or her 12th birthday. The bill also requires DCF or a county department to refuse to pay a child care provider in those circumstances beginning on the date of the conviction or delinquency adjudication.

2. DCF to immediately suspend the license of a day care center; DCF in a county having a population of 500,000 or more, a county department, or a contracted agency to immediately suspend the certification of a day care provider for purposes of reimbursement under the Wisconsin Works Program; and a school board to immediately suspend the contract of a person to operate a day care program; if the person licensed to operate the day care center, the person certified as a child care provider, or the person contracting to provide the day care program is the subject of a pending criminal charge alleging that the person has committed a serious crime or if a caregiver or nonclient resident of the day care center, child care provider, or day care program is the subject of a pending charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday. The bill also requires DCF or a county department to immediately suspend payment to a child care provider for any child care provided under the Wisconsin Works Program in those circumstances until DCF or the county department obtains information regarding the final disposition of the charge or delinquency proceeding indicating that the person is not ineligible to receive such a payment.

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.** 20.435 (6) (jm) of the statutes, as affected by 2009 Wisconsin Act
2 28, is amended to read:

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1 20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule
2 for the purposes specified in ss. 48.685 (2) (am), ~~(ar)~~, and (b) 1., (3) (a), ~~(am)~~, and (b),
3 and (5) (a), 49.45 (47), 50.02 (2), 50.025, 50.031, 50.065 (2) (am) and (b) 1., (3) (a) and
4 (b), and (5), 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981,
5 and 146.40 (4r) (b) and (er), and subch. IV of ch. 50 and to conduct health facilities
6 plan and rule development activities, for accrediting nursing homes, convalescent
7 homes, and homes for the aged, to conduct capital construction and remodeling plan
8 reviews under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing
9 or certifying, and approving facilities, issuing permits, and providing technical
10 assistance, that are not specified under any other paragraph in this subsection. All
11 moneys received under ss. 48.685 (8), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025,
12 50.031 (6), 50.065 (8), 50.13, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.93
13 (1) (c), and 50.981, all moneys received from fees for the costs of inspecting, licensing
14 or certifying, and approving facilities, issuing permits, and providing technical
15 assistance, that are not specified under any other paragraph in this subsection, and
16 all moneys received under s. 50.135 (2) shall be credited to this appropriation
17 account.

18 **SECTION 2.** 48.651 (3) of the statutes is created to read:

19 48.651 (3) (a) If a day care provider certified under sub. (1) is convicted of a
20 serious crime, as defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s. 48.685
21 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the day care
22 provider is convicted or adjudicated delinquent for committing a serious crime on or
23 after his or her 12th birthday, the department in a county having a population of
24 500,000 or more, a county department, or an agency contracted with under sub. (2)
25 shall revoke the certification of the day care provider immediately upon providing

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1 written notice of revocation and the grounds for revocation and an explanation of the
2 process for appealing the revocation.

3 (b) If a day care provider certified under sub. (1) is the subject of a pending
4 criminal charge alleging that the person has committed a serious crime, as defined
5 in s. 48.685 (1) (c) 3m., or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient
6 resident, as defined in s. 48.685 (1) (bm), of the day care provider is the subject of a
7 pending criminal charge or delinquency petition alleging that the person has
8 committed a serious crime on or after his or her 12th birthday, the department in a
9 county having a population of 500,000 or more, a county department, or an agency
10 contracted with under sub. (2) shall immediately suspend the certification of the day
11 care provider until the department, county department, or agency obtains
12 information regarding the final disposition of the charge or delinquency petition
13 indicating that the person is not ineligible to be certified under sub. (1).

14 **SECTION 3.** 48.685 (1) (c) 3m. of the statutes is created to read:

15 48.685 (1) (c) 3m. For purposes of licensing a person to operate a day care center
16 under s. 48.65, certifying a day care provider under s. 48.651, or contracting with a
17 person under s. 120.13 (14) to operate a day care center, or of permitting a person to
18 be a caregiver or nonclient resident of such a day care center or day care provider,
19 any violation listed in subds. 1. to 3. or sub. (5) (br) 1. to 7.

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

21 48.685 (1) (c) 4. A violation of the law of any other state or United States
22 jurisdiction that would be a violation listed in subd. 1., 2., ~~or 3.~~ or 3m. if committed
23 in this state.

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

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

8 **SECTION 6.** 48.685 (2) (am) 5. of the statutes is amended to read:

9 48.685 (2) (am) 5. Information maintained by the department of health services
10 under this section and under ss. 48.651 (2m), 48.75 (1m), and 120.13 (14) regarding
11 any denial to the person of a license, continuation or renewal of a license,
12 certification, or a contract to operate an entity for a reason specified in sub. (4m) (a)
13 1. to 5. and regarding any denial to the person of employment at, a contract with, or
14 permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the
15 information obtained under this subdivision indicates that the person has been
16 denied a license, continuation or renewal of a license, certification, a contract,
17 employment, or permission to reside as described in this subdivision, the
18 department, a county department, an agency contracted with under s. 48.651 (2), a
19 child welfare agency, or a school board need not obtain the information specified in
20 subds. 1. to 4.

21 **SECTION 7.** 48.685 (2) (ar) of the statutes is created to read:

22 48.685 (2) (ar) In addition to obtaining the information specified in par. (am)
23 with respect to a person who has, or is seeking, a license to operate a day care center
24 under s. 48.65, certification as a day care provider under s. 48.651, or a contract
25 under s. 120.13 (14) to operate a day care center, a nonclient resident of such an

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1 entity, or a person under 18 years of age, but not under 12 years of age, who is a
2 caregiver of such an entity, the department, a county department, an agency
3 contracted with under s. 48.651 (2), or a school board shall obtain information that
4 is contained in the sex offender registry under s. 301.45 regarding whether the
5 person has committed a sex offense that is a serious crime.

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

7 48.685 (2) (b) 2. In addition to obtaining the information specified in subd. 1.
8 with respect to a caregiver specified in sub. (1) (ag) 1. a. of a day care center that is
9 licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a
10 day care provider that is certified under s. 48.651, the day care center or day care
11 provider shall obtain information that is contained in the sex offender registry under
12 s. 301.45 regarding whether the person has committed a sex offense that is a serious
13 crime.

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

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

23 **SECTION 10.** 48.685 (2) (bb) of the statutes is amended to read:

24 48.685 (2) (bb) If information obtained under par. (am) or (b) 1. indicates a
25 charge of a serious crime, but does not completely and clearly indicate the final

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1 disposition of the charge, the department, county department, agency contracted
2 with under s. 48.651 (2), child welfare agency, school board, or entity shall make
3 every reasonable effort to contact the clerk of courts to determine the final disposition
4 of the charge. If a background information form under sub. (6) (a) or (am) indicates
5 a charge or a conviction of a serious crime, but information obtained under par. (am)
6 or (b) 1. does not indicate such a charge or conviction, the department, county
7 department, agency contracted with under s. 48.651 (2), child welfare agency, school
8 board, or entity shall make every reasonable effort to contact the clerk of courts to
9 obtain a copy of the criminal complaint and the final disposition of the complaint.
10 If information obtained under par. (am) or (b) 1., a background information form
11 under sub. (6) (a) or (am), or any other information indicates a conviction of a
12 violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01, or 947.013 obtained
13 not more than 5 years before the date on which that information was obtained, the
14 department, county department, agency contracted with under s. 48.651 (2), child
15 welfare agency, school board, or entity shall make every reasonable effort to contact
16 the clerk of courts to obtain a copy of the criminal complaint and judgment of
17 conviction relating to that violation.

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

19 48.685 (2) (bd) Notwithstanding pars. (am) and (b) 1., the department, a county
20 department, an agency contracted with under s. 48.651 (2), a child welfare agency,
21 or a school board is not required to obtain the information specified in par. (am) 1.
22 to 5., and an entity is not required to obtain the information specified in par. (b) 1.
23 a. to e., with respect to a person under 18 years of age whose background information
24 form under sub. (6) (am) indicates that the person is not ineligible to be employed,
25 contracted with, or permitted to reside at an entity for a reason specified in sub. (4m)

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1 (b) 1. to 5. and with respect to whom the department, county department, contracted
2 agency, child welfare agency, school board, or entity otherwise has no reason to
3 believe that the person is ineligible to be employed, contracted with, or permitted to
4 reside at an entity for any of those reasons. This paragraph does not preclude the
5 department, a county department, an agency contracted with under s. 48.651 (2), a
6 child welfare agency, or a school board from obtaining, at its discretion, the
7 information specified in par. (am) 1. to 5. with respect to a person described in this
8 paragraph who is a nonclient resident or a prospective nonclient resident of an entity.

9 **SECTION 12.** 48.685 (2) (bg) of the statutes is amended to read:

10 48.685 (2) (bg) If an entity employs or contracts with a caregiver for whom,
11 within the last 4 years year, the information required under par. (b) 1. a. to c. and e.
12 has already been obtained by another entity, the entity may obtain that information
13 from that other entity, which shall provide the information, if possible, to the
14 requesting entity. If an entity cannot obtain the information required under par. (b)
15 1. a. to c. and e. from another entity or if an entity has reasonable grounds to believe
16 that any information obtained from another entity is no longer accurate, the entity
17 shall obtain that information from the sources specified in par. (b) 1. a. to c. and e.

18 **SECTION 13.** 48.685 (2) (bm) of the statutes is amended to read:

19 48.685 (2) (bm) If the person who is the subject of the search under par. (am),
20 (ar), or (b) 1. is not a resident of this state, or if at any time within the 3 years
21 preceding the date of the search that person has not been a resident of this state, or
22 if the department, county department, agency contracted with under s. 48.651 (2),
23 child welfare agency, school board, or entity determines that the person's
24 employment, licensing, or state court records provide a reasonable basis for further
25 investigation, the department, county department, contracted agency, child welfare

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1 agency, school board, or entity shall make a good faith effort to obtain from any state
2 or other United States jurisdiction in which the person is a resident or was a resident
3 within the 3 years preceding the date of the search information that is equivalent to
4 the information specified in par. (am) 1., ~~(ar)~~, or (b) 1. a. The department, county
5 department, contracted agency, child welfare agency, school board, or entity may
6 require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete
7 set of the person's fingerprints. The department of justice may provide for the
8 submission of the fingerprint cards to the federal bureau of investigation for the
9 purposes of verifying the identity of the person fingerprinted and obtaining records
10 of his or her criminal arrests and convictions.

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

12 48.685 (3) (a) Every Subject to par. (am), every 4 years or at any time within
13 that period that the department, a county department, or a child welfare agency, ~~or~~
14 a school board considers appropriate, the department, county department, or child
15 welfare agency, ~~or school board~~ shall request the information specified in sub. (2)
16 (am) 1. to 5. for all caregivers specified in sub. (1) (ag) 1. b. who are licensed, certified,
17 or contracted to operate an entity; and for all persons who are nonclient residents of
18 such a caregiver, ~~and for all persons under 18 years of age, but not under 12 years~~
19 of age, ~~who are caregivers of a day care center that is licensed under s. 48.65 or~~
20 established or contracted for under s. 120.13 (14) or of a day care provider that is
21 certified under s. 48.651.

22 **SECTION 15.** 48.685 (3) (am) of the statutes is created to read:

23 48.685 (3) (am) 1. Every 3 months or at any time within that period that the
24 department, a county department, an agency contracted with under s. 48.651 (2), or
25 a school board considers appropriate, the department, county department,

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1 contracted agency, or school board shall request the information specified in sub. (2)
2 (am) 1. and (ar) for all caregivers specified in sub. (1) (ag) 1. b. who are licensed under
3 s. 48.65 to operate a day care center, certified as a day care provider under s. 48.651,
4 or contracted under s. 120.13 (14) to operate a day care center. Beginning on January
5 1, 2011, and annually after that, the department shall submit a report to the
6 appropriate standing committees of the legislature under s. 13.172 (3) describing the
7 information collected under this subdivision, specifically any information indicating
8 that a caregiver specified in sub. (1) (ag) 1. b. is ineligible under sub. (4m) (a) to be
9 licensed under s. 48.65 to operate a day care center, certified under s. 48.651 as a child
10 care provider, or contracted under s. 120.13 (14) to operate a day care center, and
11 describing any action taken in response to the receipt of information under this
12 subdivision indicating that such a caregiver is so ineligible.

13 2. Every year or at any time within that period that the department, a county
14 department, an agency contracted with under s. 48.651 (2), or a school board
15 considers appropriate, the department, county department, contracted agency, or
16 school board shall request the information specified in sub. (2) (am) 1. and (ar) for
17 all persons who are nonclient residents of a caregiver specified in sub. (1) (ag) 1. b.
18 and for all persons under 18 years of age, but not under 12 years of age, who are
19 caregivers specified in sub. (1) (ag) 1. a. of such a caregiver.

20 **SECTION 16.** 48.685 (3) (b) of the statutes is amended to read:

21 48.685 (3) (b) ~~Every Subject to par. (bm), every~~ 4 years or at any time within
22 that period that an entity considers appropriate, the entity shall request the
23 information specified in sub. (2) (b) 1. a. to e. for all persons who are caregivers
24 specified in sub. (1) (ag) 1. a. of the entity ~~other than persons under 18 years of age,~~
25 ~~but not under 12 years of age, who are caregivers of a day care center that is licensed~~

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1 ~~under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care~~
2 ~~provider that is certified under s. 48.651.~~

3 **SECTION 17.** 48.685 (3) (bm) of the statutes is created to read:

4 48.685 (3) (bm) Every year or at any time within that period that a day care
5 center that is licensed under s. 48.65 or established or contracted for under s. 120.13
6 (14) or a day care provider that is certified under s. 48.651 considers appropriate, the
7 day care center or day care provider shall request the information specified in sub.
8 (2) (b) 1. a. to e. and 2. for all persons who are caregivers specified in sub. (1) (ag) 1.
9 a. of the day care center or day care provider who are 18 years of age or over.

10 **SECTION 18.** 48.685 (3m) of the statutes is amended to read:

11 48.685 (3m) Notwithstanding subs. (2) (b) 1. and (3) (b), if the department, a
12 county department, an agency contracted with under s. 48.651 (2), a child welfare
13 agency, or a school board has obtained the information required under sub. (2) (am)
14 or (3) (a) or (am) with respect to a person who is a caregiver specified in sub. (1) (ag)
15 1. b. and that person is also an employee, contractor, or nonclient resident of an
16 entity, the entity is not required to obtain the information specified in sub. (2) (b) 1.
17 or (3) (b) with respect to that person.

18 **SECTION 19.** 48.685 (4m) (a) 1. of the statutes is amended to read:

19 48.685 (4m) (a) 1. That the person has been convicted of a serious crime or, if
20 the person is an applicant for issuance or continuation of a license to operate a day
21 care center or for initial certification under s. 48.651 or for renewal of that
22 certification or if the person is proposing to contract with a school board under s.
23 120.13 (14) or to renew a contract under that subsection, that the person has been
24 convicted of a serious crime or adjudicated delinquent on or after his or her 12th
25 birthday for committing a serious crime or that the person is the subject of a pending

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1 criminal charge or delinquency petition alleging that the person has committed a
2 serious crime on or after his or her 12th birthday.

3 **SECTION 20.** 48.685 (4m) (ad) of the statutes, as affected by 2009 Wisconsin Act
4 28, section 1073d, is amended to read:

5 48.685 **(4m)** (ad) The department, a county department, or a child welfare
6 agency may license a foster home or treatment foster home under s. 48.62; the
7 department may license a day care center under s. 48.65; the department in a county
8 having a population of 500,000 or more, a county department, or an agency
9 contracted with under s. 48.651 (2) may certify a day care provider under s. 48.651;:
10 and a school board may contract with a person under s. 120.13 (14), conditioned on
11 the receipt of the information specified in sub. (2) (am) and (ar) indicating that the
12 person is not ineligible to be licensed, certified, or contracted with for a reason
13 specified in par. (a) 1. to 5.

14 **SECTION 21.** 48.685 (4m) (ad) of the statutes, as affected by 2009 Wisconsin Act
15 28, section 1074d, and 2009 Wisconsin Act (this act), is repealed and recreated to
16 read:

17 48.685 **(4m)** (ad) The department, a county department, or a child welfare
18 agency may license a foster home under s. 48.62; the department may license a day
19 care center under s. 48.65; the department in a county having a population of 500,000
20 or more, a county department, or an agency contracted with under s. 48.651 (2) may
21 certify a day care provider under s. 48.651; and a school board may contract with a
22 person under s. 120.13 (14), conditioned on the receipt of the information specified
23 in sub. (2) (am) and (ar) indicating that the person is not ineligible to be licensed,
24 certified, or contracted with for a reason specified in par. (a) 1. to 5.

25 **SECTION 22.** 48.685 (4m) (b) 1. of the statutes is amended to read:

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1 48.685 **(4m)** (b) 1. That the person has been convicted of a serious crime or, if
2 the person is a caregiver or nonclient resident of a day care center that is licensed
3 under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care
4 provider that is certified under s. 48.651, that the person has been convicted of a
5 serious crime or adjudicated delinquent on or after his or her 12th birthday for
6 committing a serious crime or that the person is the subject of a pending criminal
7 charge or delinquency petition alleging that the person has committed a serious
8 crime on or after his or her 12th birthday.

9 **SECTION 23.** 48.685 (5) (a) of the statutes, as affected by 2009 Wisconsin Act 28,
10 is amended to read:

11 48.685 **(5)** (a) Subject to ~~par.~~ pars. (bm) and (br), the department may license
12 to operate an entity, the department in a county having a population of 500,000 or
13 more, a county department, or an agency contracted with under s. 48.651 (2) may
14 certify under s. 48.651, a county department or a child welfare agency may license
15 under s. 48.62, and a school board may contract with under s. 120.13 (14) a person
16 who otherwise may not be licensed, certified, or contracted with for a reason specified
17 in sub. (4m) (a) 1. to 5., and an entity may employ, contract with, or permit to reside
18 at the entity a person who otherwise may not be employed, contracted with, or
19 permitted to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the
20 person demonstrates to the department, the county department, the contracted
21 agency, the child welfare agency, or the school board or, in the case of an entity that
22 is located within the boundaries of a reservation, to the person or body designated
23 by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and in accordance
24 with procedures established by the department by rule or by the tribe that he or she
25 has been rehabilitated.

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1 **SECTION 24.** 48.685 (5) (br) of the statutes is created to read:

2 48.685 (5) (br) For purposes of licensing a person to operate a day care center
3 under s. 48.65, certifying a day care provider under s. 48.651, or contracting with a
4 person under s. 120.13 (14) to operate a day care center or of permitting a person to
5 be a nonclient resident or caregiver specified in sub. (1) (ag) 1. a. of a day care center
6 or day care provider, no person who has been convicted or adjudicated delinquent on
7 or after his or her 12th birthday for committing any of the following offenses or who
8 is the subject of a pending criminal charge or delinquency petition alleging that the
9 person has committed any of the following offenses on or after his or her 12th
10 birthday may be permitted to demonstrate that he or she has been rehabilitated:

11 1. An offense under ch. 948 that is a felony, other than a violation of s. 948.22
12 (2) or 948.51 (2).

13 2. A violation of s. 940.19 (3), 1999 stats., or of s. 940.19 (2), (4), (5), or (6) or
14 940.20 (1) or (1m), if the victim is the spouse of the person.

15 3. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21, 940.225 (1),
16 (2), or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.10 (2), or 943.32 (2).

17 4. A violation of sub. (2), (3), (4m) (b), or (6), if the violation involves the
18 provision of false information to the department, a county department, an agency
19 contracting under s. 48.651 (2), a school board, or an entity.

20 5. An offense involving fraudulent activity as a participant in the Wisconsin
21 Works program under ss. 49.141 to 49.161, including as a recipient of a child care
22 subsidy under s. 49.155, or as a recipient of aid to families with dependent children
23 under s. 49.19, medical assistance under subch. IV of ch. 49, food stamps benefits
24 under the food stamp program under 7 USC 2011 to 2036, supplemental security
25 income payments under s. 49.77, payments for the support of children of

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1 supplemental security income recipients under s. 49.775, or health care benefits
2 under the Badger Care health care program under s. 49.665.

3 6. A violation of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3),
4 125.68 (12), 940.09, 940.19 (2), (4), (5), or (6), 940.20, 940.203, 940.205, 940.207,
5 940.25, or 943.23 (1g), a violation of s. 948.51 (2) that is a felony under s. 948.51 (3)
6 (b) or (c), a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under s. 346.65 (2)
7 (am) 5., 6., or 7., or (f), (2j) (d), or (3m), or an offense under ch. 961 that is a felony,
8 if committed not more than 5 years before the date of the investigation under sub.
9 (2) (am) or (b) 1.

10 7. A violation of s. 948.22 (2), if committed not more than 5 years before the date
11 of the investigation under sub. (2) (am) or (b) 1., unless the person has paid all
12 arrearages due and is meeting his or her current support obligations.

13 **SECTION 25.** 48.685 (5c) (a) of the statutes is amended to read:

14 48.685 (5c) (a) Any person who is permitted but fails under sub. (5) (a) to
15 demonstrate to the department, an agency contracted with under s. 48.651 (2), or a
16 child welfare agency that he or she has been rehabilitated may appeal to the
17 secretary or his or her designee. Any person who is adversely affected by a decision
18 of the secretary or his or her designee under this paragraph has a right to a contested
19 case hearing under ch. 227.

20 **SECTION 26.** 48.685 (6) (am) of the statutes is amended to read:

21 48.685 (6) (am) Every Except as provided in this paragraph, every 4 years an
22 entity shall require all of its caregivers and nonclient residents to complete a
23 background information form that is provided to the entity by the department. Every
24 year a day care center that is licensed under s. 48.65 or established or contracted for
25 under s. 120.13 (14) or a day care provider that is certified under s. 48.651 shall

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1 require all of its caregivers and nonclient residents to complete a background
2 information form that is provided to the day care center or day care provider by the
3 department.

4 **SECTION 27.** 48.685 (6) (b) 2. of the statutes is amended to read:

5 48.685 **(6)** (b) 2. For caregivers who are licensed or certified by a county
6 department or an agency contracted with under s. 48.651 (2), for persons who are
7 nonclient residents of an entity that is licensed or certified by a county department
8 or an agency contracted with under s. 48.651 (2), and for other persons specified by
9 the department by rule, the entity shall send the background information form to the
10 county department or contracted agency.

11 **SECTION 28.** 48.685 (8) of the statutes is amended to read:

12 48.685 **(8)** The department, the department of health services, a county
13 department, an agency contracted with under s. 48.651 (2), a child welfare agency,
14 or a school board may charge a fee for obtaining the information required under sub.
15 (2) (am), (ar), or (3) (a) or (am) or for providing information to an entity to enable the
16 entity to comply with sub. (2) (b) 1. or (3) (b). The fee may not exceed the reasonable
17 cost of obtaining the information. No fee may be charged to a nurse aide, as defined
18 in s. 146.40 (1) (d), for obtaining or maintaining information if to do so would be
19 inconsistent with federal law.

20 **SECTION 29.** 48.715 (4g) of the statutes is created to read:

21 48.715 **(4g)** (a) If a person who has been issued a license under s. 48.66 (1) (a)
22 or a probationary license under s. 48.69 to operate a day care center is convicted of
23 a serious crime, as defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s.
24 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the day
25 care center is convicted or adjudicated delinquent for committing a serious crime on

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1 or after his or her 12th birthday, the department shall revoke the license of the day
2 care center immediately upon providing written notice of revocation and the grounds
3 for revocation and an explanation of the process for appealing the revocation.

4 (b) If a person who has been issued a license under s. 48.66 (1) (a) or a
5 probationary license under s. 48.69 to operate a day care center is the subject of a
6 pending criminal charge alleging that the person has committed a serious crime, as
7 defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or
8 a nonclient resident, as defined in s. 48.685 (1) (bm), of the day care center is the
9 subject of a pending criminal charge or delinquency petition alleging that the person
10 has committed a serious crime on or after his or her 12th birthday, the department
11 shall immediately suspend the license of the day care center until the department
12 obtains information regarding the final disposition of the charge or delinquency
13 petition indicating that the person is not ineligible to be licensed to operate a day care
14 center.

15 **SECTION 30.** 49.133 (intro.) of the statutes is renumbered 49.133 (1m) (a) and
16 amended to read:

17 49.133 **(1m)** (a) The If a child care provider is convicted of a serious crime, as
18 defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or
19 a nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider is
20 convicted or adjudicated delinquent for committing a serious crime on or after his or
21 her 12th birthday, the department or a county department under s. 46.215, 46.22, or
22 46.23 may shall refuse to pay ~~a~~ the child care provider for any child care provided
23 under s. 49.132, 1995 stats., or any other program if ~~any of the following applies to~~
24 ~~the child care provider, employee or person living on the premises where child care~~
25 ~~is provided:~~ beginning on the date of the conviction or delinquency adjudication.

BILL**SECTION 31**

1 **SECTION 31.** 49.133 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is renumbered 49.133 (2m) (a) and amended to read:

3 49.133 **(2m)** (a) The person has been convicted of ~~a felony or misdemeanor that~~
4 or adjudicated delinquent on or after his or her 12th birthday for an offense that is
5 not a serious crime, as defined in s. 48.685 (1) (c) 3m., but the department or county
6 department under s. 46.215, 46.22, or 46.23, agency contracted with under s. 48.651
7 (2), or school board determines under s. 48.685 (5m) that the offense substantially
8 relates to the care of children or the department or county department determines
9 that the offense substantially relates to the operation of a business.

10 **SECTION 32.** 49.133 (1m) (b) of the statutes is created to read:

11 49.133 **(1m)** (b) If a child care provider is the subject of a pending criminal
12 charge alleging that the person has committed a serious crime, as defined in s. 48.685
13 (1) (c) 3m., or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident,
14 as defined in s. 48.685 (1) (bm), of the child care provider is the subject of a pending
15 criminal charge or delinquency petition alleging that the person has committed a
16 serious crime on or after his or her 12th birthday, the department or county
17 department under s. 46.215, 46.22, or 46.23 shall immediately suspend payment to
18 the child care provider for any child care provided under s. 49.132, 1995 stats., or any
19 other program until the department obtains information regarding the final
20 disposition of the charge or delinquency petition indicating that the person is not
21 ineligible to receive such a payment.

22 **SECTION 33.** 49.133 (2) of the statutes is renumbered 49.133 (2m) (b) and
23 amended to read:

24 49.133 **(2m)** (b) The person is a caregiver specified in s. 48.685 (1) (ag) 1. a. or
25 a nonclient resident, as defined in s. 48.685 (1) (bm), and is the subject of a pending

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1 criminal charge that the department or, county department under s. 46.215, 46.22,
2 or 46.23, agency contracted with under s. 48.651 (2), or school board determines
3 substantially relates to the care of children.

4 **SECTION 34.** 49.133 (2m) (intro.) of the statutes is created to read:

5 49.133 **(2m)** (intro.) The department or a county department under s. 46.215,
6 46.22, or 46.23 may refuse to pay a child care provider for child care provided under
7 s. 49.132, 1995 stats., or any other program if any of the following applies to the child
8 care provider or to a caregiver specified in s. 48.685 (1) (ag) 1. a. or nonclient resident,
9 as defined in s. 48.685 (1) (bm), of the child care provider:

10 **SECTION 35.** 49.133 (3) of the statutes is renumbered 49.133 (2m) (c).

11 **SECTION 36.** 49.133 (4) of the statutes, as created by 2009 Wisconsin Act 28, is
12 renumbered 49.133 (2m) (c).

13 **SECTION 37.** 49.155 (7) of the statutes, as affected by 2009 Wisconsin Act 28,
14 is repealed and recreated to read:

15 49.155 **(7)** REFUSAL TO PAY CHILD CARE PROVIDERS. (a) 1. If a child care provider
16 is convicted of a serious crime, as defined in s. 48.685 (1) (c) 3m., or if a caregiver
17 specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1)
18 (bm), of the child care provider is convicted or adjudicated delinquent for committing
19 a serious crime on or after his or her 12th birthday, the department or the county
20 department under s. 46.215, 46.22, or 46.23 shall refuse to pay the child care provider
21 for any child care provided under this section beginning on the date of the conviction
22 or delinquency adjudication.

23 2. If a child care provider is the subject of a pending criminal charge alleging
24 that the person has committed a serious crime, as defined in s. 48.685 (1) (c) 3m., or
25 if a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in

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1 s. 48.685 (1) (bm), of the child care provider is the subject of a pending criminal charge
2 or delinquency petition alleging that the person has committed a serious crime on
3 or after his or her 12th birthday, the department or the county department under s.
4 46.215, 46.22, or 46.23 shall immediately suspend payment to the child care provider
5 for any child care provided under this section until the department obtains
6 information regarding the final disposition of the charge or delinquency petition
7 indicating that the person is not ineligible to receive such a payment.

8 (b) The department or the county department under s. 46.215, 46.22, or 46.23
9 may refuse to pay a child care provider for child care provided under this section if
10 any of the following applies to the child care provider or to a caregiver specified in
11 s. 48.685 (1) (ag) 1. a. or nonclient resident, as defined in s. 48.685 (1) (bm), of the child
12 care provider:

13 1. The person has been convicted of or adjudicated delinquent on or after his
14 or her 12th birthday for committing an offense that is not a serious crime, as defined
15 in s. 48.685 (1) (c) 3m., but the department, county department, agency contracted
16 with under s. 48.651 (2), or school board determines under s. 48.685 (5m) that the
17 offense substantially relates to the care of children or the department or county
18 department determines that the offense substantially relates to the operation of a
19 business.

20 2. The person is a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient
21 resident, as defined in s. 48.685 (1) (bm), and is the subject of a pending criminal
22 charge that the department, county department, agency contracted with under s.
23 48.651 (2), or school board determines substantially relates to the care of children.

24 3. The person has been determined under s. 48.981 to have abused or neglected
25 a child.

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1 4. The department or county department reasonably suspects that the person
2 has violated any provision under the program under this section or any rule
3 promulgated under this section.

4 **SECTION 38.** 120.13 (14) of the statutes is renumbered 120.13 (14) (a).

5 **SECTION 39.** 120.13 (14) (b) of the statutes is created to read:

6 120.13 **(14)** (b) 1. If a person who has contracted under par. (a) to provide a day
7 care program is convicted of a serious crime, as defined in s. 48.685 (1) (c) 3m., or if
8 a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in
9 s. 48.685 (1) (bm), of the day care program is convicted or adjudicated delinquent for
10 committing a serious crime on or after his or her 12th birthday, the school board shall
11 rescind the contract of the contractor immediately upon providing written notice of
12 the rescission and the grounds for the rescission and an explanation of the process
13 for appealing the rescission.

14 2. If a person who has contracted under par. (a) to provide a day care program
15 is the subject of a pending criminal charge alleging that the person has committed
16 a serious crime, as defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s.
17 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the day
18 care program is the subject of a pending criminal charge or delinquency petition
19 alleging that the person has committed a serious crime on or after his or her 12th
20 birthday, the school board shall immediately suspend the contract of the contractor
21 until the school board obtains information regarding the final disposition of the
22 charge or delinquency petition indicating that the person is not ineligible to provide
23 a day care program under this subsection.

24 **SECTION 40. Initial applicability.**

Duerst, Christina

From: McGinnis, Cindy

Sent: Friday, October 02, 2009 12:22 PM

To: LRB.Legal

Subject: Draft Review: LRB 09-3578/1 Topic: Child care provider background checks

Please Jacket LRB 09-3578/1 for the ASSEMBLY.