



2009 SENATE BILL 642

March 24, 2010 – Introduced by Senators VINEHOUT and TAYLOR, cosponsored by Representatives GRIGSBY, KESSLER, A. WILLIAMS and FIELDS. Referred to Committee on Children and Families and Workforce Development.

1 **AN ACT** *to amend* 48.685 (4m) (a) 1., 48.685 (4m) (b) 1., 48.685 (5) (br) (intro.),
2 48.685 (5) (br) 3., 48.685 (5) (br) 3m., 48.685 (5) (br) 4., 48.685 (5) (br) 5., 48.685
3 (5c) (a), 48.685 (5c) (b), 48.685 (5c) (c), 48.685 (5d) (a) (intro.), 48.685 (5d) (a) 1.,
4 48.685 (5d) (a) 3., 48.685 (5d) (a) 4., 48.685 (5d) (a) 5. and 48.685 (5g); and **to**
5 **create** 48.685 (5) (bt) of the statutes; **relating to:** the period for which a person
6 who has been convicted, sanctioned, or adjudicated delinquent for committing
7 certain serious crimes is prohibited from being licensed, certified, or contracted
8 with to provide child care, from being employed or contracted as a caregiver of
9 a child care provider, or from being permitted to reside at a premises where
10 child care is provided, permitting a person who is not permanently barred from
11 residing at such a premises to demonstrate that he or she is not a threat to the

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1 safety of the children receiving care at the premises, and granting rule-making
2 authority.

Analysis by the Legislative Reference Bureau

Current law prohibits any person who has been convicted, sanctioned, or adjudicated delinquent on or after his or her 12th birthday for committing certain violations, including any of the following violations, 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. For purposes of being licensed, certified, or contracted with to provide child care, identity theft, robbery, forgery, felony receiving stolen property, felony insurance fraud, a felony credit card crime, felony theft of telecommunication services, commercial mobile service, video service, or satellite cable programming, felony retail theft, a felony computer crime, or a felony crime against a financial institution (serious property crime).

2. A violation of the background check law, if the violation involves the provision of false information to the Department of Children and Families, a county department of human services or social services, an agency contracted with to certify child care providers for purposes of reimbursement under the Wisconsin Works program, a school board, or a child care provider (background check violation).

3. 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 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 (public assistance fraud).

This bill reduces the period for which a person who has committed a serious property crime, a background check violation, or public assistance fraud 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 from a permanent bar to a bar of five years after the person was convicted, sanctioned, or adjudicated delinquent for that crime, violation, or fraud.

The bill also permits a person who is not permanently barred from showing that he or she has been rehabilitated to reside at a premises where child care is provided if, in lieu of demonstrating that he or she has been rehabilitated, the person demonstrates that he or she is not a threat to the safety of the children receiving care at the premises.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.685 (4m) (a) 1. of the statutes, as affected by 2009 Wisconsin Acts
2 76 and 185, is amended to read:

3 48.685 **(4m)** (a) 1. That the person has been convicted of a serious crime or, if
4 the person is an applicant for issuance or continuation of a license to operate a child
5 care center or for initial certification under s. 48.651 or for renewal of that
6 certification or if the person is proposing to contract with a school board under s.
7 120.13 (14) or to renew a contract under that subsection, that the person has been
8 convicted of a serious crime, sanctioned, or adjudicated delinquent on or after his or
9 her 12th birthday for committing a serious crime or that the person is the subject of
10 a pending criminal charge, sanction, or delinquency petition alleging that the person
11 has committed a serious crime on or after his or her 12th birthday.

12 **SECTION 2.** 48.685 (4m) (b) 1. of the statutes, as affected by 2009 Wisconsin Acts
13 76 and 185, is amended to read:

14 48.685 **(4m)** (b) 1. That the person has been convicted of a serious crime or, if
15 the person is a caregiver or nonclient resident of a child care center that is licensed
16 under s. 48.65 or established or contracted for under s. 120.13 (14) or of a child care
17 provider that is certified under s. 48.651, that the person has been convicted of a
18 serious crime, sanctioned, or adjudicated delinquent on or after his or her 12th
19 birthday for committing a serious crime or that the person is the subject of a pending
20 criminal charge, sanction, or delinquency petition alleging that the person has
21 committed a serious crime on or after his or her 12th birthday.

SENATE BILL 642**SECTION 3**

1 **SECTION 3.** 48.685 (5) (br) (intro.) of the statutes, as created by 2009 Wisconsin
2 Act 76, is amended to read:

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

13 **SECTION 4.** 48.685 (5) (br) 3. of the statutes, as created by 2009 Wisconsin Act
14 76, is amended to read:

15 48.685 (5) (br) 3. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21,
16 940.225 (1), (2), or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.10 (2),
17 ~~or 943.32 (2), or 943.87.~~

18 **SECTION 5.** 48.685 (5) (br) 3m. of the statutes, as created by 2009 Wisconsin Act
19 76, is amended to read:

20 48.685 (5) (br) 3m. Except for purposes of permitting a person to be a nonclient
21 resident or caregiver specified in sub. (1) (ag) 1. a. of a day care center or day care
22 provider, a violation of s. 943.201, 943.203, 943.32 ~~(2)~~ (1), or 943.38 (1) or (2); a
23 violation of s. 943.34 (1), 943.395 (1), 943.41 (3) (e), (4) (a), (5), (6), or (6m), 943.45 (1),
24 943.455 (2), 943.46 (2), 943.47 (2), 943.50 (1m), or 943.70 (2) (a) or (am) or (3) (a) that
25 is a felony; or an offense under subch. IV of ch. 943 that is a felony, if the person was

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1 convicted of or adjudicated delinquent for the violation less than 5 years before the
2 date of the investigation under sub. (2) (am) or (b) 1.

3 **SECTION 6.** 48.685 (5) (br) 4. of the statutes, as created by 2009 Wisconsin Act
4 76, is amended to read:

5 48.685 (5) (br) 4. A violation of sub. (2), (3), (4m) (b), or (6), if the violation that
6 involves the provision of false information to or the intentional withholding of
7 information from the department, a county department, an agency contracting
8 under s. 48.651 (2), a school board, or an entity, if the person was sanctioned under
9 sub. (4) or (6) (c) for the violation less than 5 years before the date of the investigation
10 under sub. (2) (am) or (b) 1.

11 **SECTION 7.** 48.685 (5) (br) 5. of the statutes, as created by 2009 Wisconsin Act
12 76, is amended to read:

13 48.685 (5) (br) 5. An offense involving fraudulent activity as a participant in
14 the Wisconsin Works program under ss. 49.141 to 49.161, including as a recipient of
15 a child care subsidy under s. 49.155, or as a recipient of aid to families with dependent
16 children under s. 49.19, medical assistance under subch. IV of ch. 49, food stamps
17 benefits under the food stamp program under 7 USC 2011 to 2036, supplemental
18 security income payments under s. 49.77, payments for the support of children of
19 supplemental security income recipients under s. 49.775, or health care benefits
20 under the Badger Care health care program under s. 49.665, if the person was
21 convicted of or adjudicated delinquent for the offense less than 5 years before the date
22 of the investigation under sub. (2) (am) or (b) 1.

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

24 48.685 (5) (bt) Notwithstanding pars. (a) and (br), a person who is licensed to
25 operate a child care center under s. 48.65, certified to provide child care under s.

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1 48.651, or contracted with to operate a child care center under s. 120.13 (14) may
2 permit a person who has not been convicted of an offense or violation specified in par.
3 (br) 1. to 3. to be a nonclient resident of the child care center or child care provider
4 if the person, in lieu of demonstrating under par. (a) that he or she has been
5 rehabilitated, demonstrates to the department, the county department, the
6 contracted agency, the school board or, in the case of a child care center or child care
7 provider that is located within the boundaries of a reservation, the person or body
8 designated by the Indian tribe under sub. (5d) (a) 3. by clear and convincing evidence
9 and in accordance with procedures established by the department by rule or by the
10 Indian tribe that he or she is not a threat to the safety of the children receiving care
11 from the child care center or child care provider.

12 **SECTION 9.** 48.685 (5c) (a) of the statutes, as affected by 2009 Wisconsin Act 76,
13 is amended to read:

14 48.685 (5c) (a) Any person who is permitted but fails under sub. (5) (a) or (bt)
15 to demonstrate to the department, an agency contracted with under s. 48.651 (2), or
16 a child welfare agency that he or she has been rehabilitated or that he or she is not
17 a threat to the safety of children may appeal to the secretary or his or her designee.
18 Any person who is adversely affected by a decision of the secretary or his or her
19 designee under this paragraph has a right to a contested case hearing under ch. 227.

20 **SECTION 10.** 48.685 (5c) (b) of the statutes is amended to read:

21 48.685 (5c) (b) Any person who is permitted but fails under sub. (5) (a) or (bt)
22 to demonstrate to the county department that he or she has been rehabilitated or
23 that he or she is not a threat to the safety of children may appeal to the director of
24 the county department or his or her designee. Any person who is adversely affected

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1 by a decision of the director or his or her designee under this paragraph has a right
2 to appeal the decision under ch. 68.

3 **SECTION 11.** 48.685 (5c) (c) of the statutes is amended to read:

4 48.685 (5c) (c) Any person who is permitted but fails under sub. (5) (a) or (bt)
5 to demonstrate to the school board that he or she has been rehabilitated or that he
6 or she is not a threat to the safety of children may appeal to the state superintendent
7 of public instruction or his or her designee. Any person who is adversely affected by
8 a decision of the state superintendent or his or her designee under this paragraph
9 has a right to a contested case hearing under ch. 227.

10 **SECTION 12.** 48.685 (5d) (a) (intro.) of the statutes, as affected by 2009
11 Wisconsin Act 94, is amended to read:

12 48.685 (5d) (a) (intro.) Any Indian tribe that chooses to conduct rehabilitation
13 reviews under sub. (5) (a) or threat to safety reviews under sub. (5) (bt) shall submit
14 to the department a rehabilitation or threat to safety review plan that includes all
15 of the following:

16 **SECTION 13.** 48.685 (5d) (a) 1. of the statutes is amended to read:

17 48.685 (5d) (a) 1. The criteria to be used to determine if a person has been
18 rehabilitated or is not a threat to the safety of children.

19 **SECTION 14.** 48.685 (5d) (a) 3. of the statutes, as affected by 2009 Wisconsin Act
20 94, is amended to read:

21 48.685 (5d) (a) 3. The title of the person or body designated by the Indian tribe
22 to determine whether a person has been rehabilitated or is not a threat to the safety
23 of children.

24 **SECTION 15.** 48.685 (5d) (a) 4. of the statutes, as affected by 2009 Wisconsin Act
25 94, is amended to read:

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1 48.685 (5d) (a) 4. The manner in which the Indian tribe will submit information
2 relating to a rehabilitation or threat to safety review to the department so that the
3 department may include that information in its report to the legislature required
4 under sub. (5g).

5 **SECTION 16.** 48.685 (5d) (a) 5. of the statutes is amended to read:

6 48.685 (5d) (a) 5. A copy of the form to be used to request a review and a copy
7 of the form on which a written decision is to be made regarding whether a person has
8 demonstrated rehabilitation that he or she has been rehabilitated or is not a threat
9 to the safety of children.

10 **SECTION 17.** 48.685 (5g) of the statutes is amended to read:

11 48.685 (5g) Beginning on January 1 1999 2011, and annually thereafter, the
12 department shall submit a report to the legislature under s. 13.172 (2) that specifies
13 the number of persons in the previous year who have requested to demonstrate that
14 they have been rehabilitated under sub. (5) (a) or that they are not a threat to the
15 safety of children under sub. (5) (bt), the number of persons who successfully
16 demonstrated that they have been rehabilitated under sub. (5) (a) or that they are
17 not a threat to the safety of children under sub. (5) (bt), and the reasons for the
18 success or failure of a person who has attempted to demonstrate that he or she has
19 been rehabilitated or that he or she is not a threat to the safety of children.

20 **SECTION 18. Initial applicability.**

21 (1) RETROACTIVE APPLICATION. This act first applies to a decision to deny,
22 suspend, revoke, rescind, or refuse to renew a license under section 48.65 of the
23 statutes, a certification under section 48.651 of the statutes, or a contract under
24 section 120.13 (14) of the statutes or to permit a person to be a nonclient resident or
25 caregiver, as defined in section 48.685 (1) (ag) 1. a. of the statutes, of a child care

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1 center or child care provider made on the effective date of this subsection,
2 notwithstanding that the conviction, sanction, or adjudication on which the decision
3 is based was obtained or filed before the effective date of this subsection.

4 **SECTION 19. Effective date.**

5 (1) BACKGROUND INVESTIGATIONS OF CHILD CARE PROVIDERS. This act takes effect
6 on the first day of the 3rd month beginning after publication.

7 (END)