

2009 DRAFTING REQUEST

Senate Amendment (SA-SB331)

Received: 10/12/2009

Received By: gmalaise

Wanted: 10/13/2009

Identical to LRB:

For: Robert Jauch (608) 266-3510

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: Sen.Jauch@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Child care provider background checks; barred offenses

Instructions:

See attached

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 10/12/2009	jdyer 10/13/2009		_____			
/1			jfrantze 10/13/2009	_____	cduerst 10/13/2009	cduerst 10/13/2009	
/2	gmalaise 10/14/2009	jdyer 10/15/2009	jfrantze 10/15/2009	_____	mbarman 10/15/2009	mbarman 10/15/2009	

FE Sent For:

<END>

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1/?	gmalaise	10/13 jld P.H.	JA	Ken 10 P.H. 13 R.S.			

FE Sent For:

<END>

Malaise, Gordon

From: McGinnis, Cindy
Sent: Friday, October 09, 2009 4:32 PM
To: Malaise, Gordon
Cc: Kahn, Carrie; Sappenfield, Anne; Rose, Laura
Subject: FW: drafting instructions for child care licensure bill

Gordon-

Here are some changes we need to AB 462 and SB 331

On Page 16 line 18 after "false information" add "intentionally withholding information"

In the list of crimes that will result in the suspension of Shares Payments and permanent bars from licensure include the following crimes under CH. 943:

Felony offenses under:

- Receiving stolen property
- Computer crimes
- Credit card crimes
- Filing fraudulent insurance claims
- Retail theft
- Forgery
- Theft of telecommunications service
- Theft of cell phone service
- Theft of video service
- Theft of satellite service
- Identity theft

Felony offenses under ch. 943 Subchapter IV

Additionally, for the crimes under DHS 12 that result in a 5 year bar, require that 5 year clock to begin upon completion of the sentence (when the person is no longer under supervision of DOC)

There were several offenses on the original foster care list that apparently didn't make it into our bill, basically the bar with rehab offenses:

- 940.12—Assisting suicide, bar with rehab
- 940.22 (2)(3)—Sexual exploitation by a therapist; duty to report, bar with rehab
- 940.285—Abuse of vulnerable adults (misdemeanor or felony), bar with rehab
- 940.29—Abuse of residents of a penal facility
- 940.295—Abuse or neglect of patients or residents (misdemeanor or felony) bar with rehab
- Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property – bar with rehab
- Finding by a governmental agency of child abuse or neglect – bar with rehab

In addition, there is one bar with rehab offense that Gundrum's bill included that ours didn't that seems to make sense:

- 942.09(2) felony depicting nudity

Finally, we need to add language saying that an employee (state/county) can't be disciplined or can't be affected for reporting fraud. They can go above supervisor without consequence.

This can be done in one amendment.

10/12/2009

If you have any questions, please contact Carrie, or Anne or Laura as I will be out of the office all next week.

Carrie is execing on this bill in her committee on Wednesday, so she'd like her copy by Monday so she can forward it to her members.

Thanks so much.

Cindy McGinnis
Office of State Representative Tamara Grigsby
324 East State Capitol
PO Box 8952
Madison, WI 53708
1-888-534-0018 - toll free
(608) 266-0645
(608) 282-3618 - fax

Malaise, Gordon

From: Mcginnis, Cindy
Sent: Friday, October 09, 2009 5:43 PM
To: Malaise, Gordon
Cc: Kahn, Carrie; Sappenfield, Anne; Rose, Laura
Subject: FW: AB 462

Gordon-

See the note below from DCF about an incorrect appropriations reference in current statute that needs to be fixed in our bills. If you have any questions, please contact Bob Nikolay at DCF or Kim Swissdorf at LFB.

Thanks

Cindy

From: Nikolay, Robert A - DCF
Sent: Friday, October 09, 2009 5:23 PM
To: Collins, Kimmie L - DCF
Cc: Swissdorf, Kim - LEGIS
Subject: AB 462

Kim Swissdorf inquired as to whether the change in the language to DHS' appropriation in AB 462 (and SB 331) was in error and instead should have been a change to the DHS licensing appropriations. While not technically in error since the s. 48.685 language related to criminal history and child abuse record search is in the current appropriation language for DHS under s. 20.435(6)(jm), it does, I believe, point out the need for language changes to the Department's Ch. 20 licensing appropriations [20.437(1)(jm) and (2)(jn)] that should probably have been done at the time of the creation of the Department.

I would suggest that it is appropriate to add to both the DCF licensing appropriations [(1)(jm) and (2)(jn)] language that is similar to the language currently in s. 20.435(6)(jm) that references the sections in s. 46.865. I'm not sure that language in s. 20.435(6)(jm) is needed any longer, but will defer to DHS and the drafter on that.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa0854? 10

GMM

Jld

IN 10/12
Tues 10/13 10:00 AM

SENATE AMENDMENT ,
TO 2009 SENATE BILL 331

DN of E

1 At the locations indicated, amend the bill as follows:

2 1. Page 4, line 1: delete the material beginning with that line and ending with
3 page 5, line 17, and substitute:

4 "SECTION 1d. 20.435 (6) (jm) of the statutes, as affected by 2009 Wisconsin Act
5 28, is amended to read:

6 20.435 (6) (jm) *Licensing and support services*. The amounts in the schedule
7 for the purposes specified in ss. ~~48.685 (2) (am) and (b) 1., (3) (a) and (b), and (5) (a),~~
8 49.45 (47), 50.02 (2), 50.025, 50.031, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5),
9 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and 146.40
10 (4r) (b) and (er), and subch. IV of ch. 50 and to conduct health facilities plan and rule
11 development activities, for accrediting nursing homes, convalescent homes, and
12 homes for the aged, to conduct capital construction and remodeling plan reviews
13 under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or

1 certifying, and approving facilities, issuing permits, and providing technical
 2 assistance, that are not specified under any other paragraph in this subsection. All
 3 moneys received under ss. 48.685 (8), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025,
 4 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
 5 (1) (c), and 50.981, all moneys received from fees for the costs of inspecting, licensing
 6 or certifying, and approving facilities, issuing permits, and providing technical
 7 assistance, that are not specified under any other paragraph in this subsection, and
 8 all moneys received under s. 50.135 (2) shall be credited to this appropriation
 9 account.

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293; 1999 a. 5, 9, 32, 52, 84, 103, 109, 113, 133, 185, 186; 2001 a. 16, 69, 103, 105; 2003 a. 33, 139, 186, 318, 320, 326, 327; 2005 a. 15, 22; 2005 a. 25 ss. 299 to 331, 2498 to 2500, 2510; 2005 a. 74, 107, 199, 228, 264, 388, 406, 434; 2007 a. 20 ss. 331 to 422, 9121 (6) (a); 2007 a. 39, 88, 107, 111, 130; 2009 a. 2, 15, 2009 a. 28 ss. 325 to 470, 485, 488, 490.

10 **SECTION 1g.** 20.437 (1) (jm) of the statutes, as affected by 2009 Wisconsin Act

11 28, section 493d, is amended to read:

12 20.437 (1) (jm) *Licensing activities.* All moneys received from licensing
 13 activities under ss. 48.60, 48.62, 48.625, and 938.22 (7) and from fees under ss.
 14 48.615, 48.625, and 938.22 (7) (b) and (c), and from fees under s. 48.685 (8) charged
 15 to entities other than day care centers or day care providers, for the costs of licensing
 16 child welfare agencies under s. 48.60, foster homes and treatment foster homes
 17 under s. 48.62, group homes under s. 48.625, and shelter care facilities under s.
 18 938.22 (7) and for the purposes specified in s. 48.685 (2) (am) and (b) 1., (3) (a) and
 19 (b), and (5) (a) with respect to those entities.

NOTE: NOTE: Par. (jm) is amended by 2009 Wis. Act 28 eff. the date stated in the notice provided by the secretary of children and families and published in the Wisconsin Administrative Register under s. 48.62 (9) to read: NOTE:

20 **SECTION 1j.** 20.437 (1) (jm) of the statutes, as affected by 2009 Wisconsin Act

21 28, section 476h, and (this act), is repealed and recreated to read:

2009 Wisconsin Act

1 20.437 (1) (jm) *Licensing activities.* All moneys received from licensing
2 activities under ss. 48.60, 48.62, 48.625, and 938.22 (7), from fees under ss. 48.615,
3 48.625, and 938.22 (7) (b) and (c), and from fees under s. 48.685 (8) charged to entities
4 other than day care centers or day care providers, for the costs of licensing child
5 welfare agencies under s. 48.60, foster homes under s. 48.62, group homes under s.
6 48.625, and shelter care facilities under s. 938.22 (7) and for the purposes specified
7 in s. 48.685 (2) (am) and (b) 1., (3) (a) and (b), and (5) (a) with respect to those entities.

8 **SECTION 1m.** 20.437 (2) (jn) of the statutes, as created by 2009 Wisconsin Act
9 28, is amended to read:

10 20.437 (2) (jn) *Child care licensing and certification activities.* All moneys
11 received from licensing activities under s. 48.65, from certifying activities under s.
12 48.651, and from fees under ss. 48.65 (3) and 48.651 (2), and from fees under s. 48.685
13 (8) charged to day care centers and day care providers for the costs of licensing day
14 care centers under s. 48.65 and of certifying day care providers under s. 48.651 and
15 for the purposes specified in s. 48.685 (2) (am), (ar), and (b) 1. and 2., (3) (am) and
16 (bm), and (5) (a) with respect to day care centers and day care providers.”.

History: 2007 a. 20 ss. 331, 335, 340, 341, 342, 344 to 352, 354 to 368g, 374 to 376, 380, 381, 401, 404, 405, 423 to 437, 447, 448, 450, 451, 453, 453p, 454, 456 to 458, 460e, 463, 465 to 472, 474 to 480, 9121 (6) (a); 2009 a. 28 ss. 471 to 513, 522.

17 **2.** Page 6, line 13: after that line insert:

18 “**SECTION 2r.** 48.685 (1) (c) 2. of the statutes is amended to read:

19 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
20 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295,
21 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2), 948.05, 948.051, 948.055, 948.06,
22 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1), 948.30, or
23 948.53.”.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28.

1 **3.** Page 15, line 25: after that line insert:

2 **SECTION 23m.** 48.685 (5) (bm) 4. of the statutes is amended to read:

3 48.685 (5) (bm) 4. A violation of s. 940.19 (3), 1999 stats., or of s. 125.075 (1),
4 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5),
5 or (6), 940.20, 940.203, 940.205, 940.207, or 940.25, a violation of s. 346.63 (1), (2),
6 (5), or (6) that is a felony under s. 346.65 (2) (am) 5., 6., or 7., or (f), (2j) (d), or (3m),
7 or an offense under ch. 961 that is a felony, if ~~committed not more~~ the person
8 completed his or her sentence, including any probation, parole, or extended
9 supervision, or was discharged by the department of corrections, less than 5 years
10 before the date of the investigation under sub. (2) (am).".

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28.

11 **4.** Page 16, line 16: delete "or 943.32 (2)." and substitute "943.201, 943.203,

12 943.32 (2), or 943.38 (1) or (2); a violation of s. 943.34 (1), 943.395 (1), 943.41 (3) (e),
13 (4) (a), (5), (6), or (6m), 943.45 (1), 943.455 (2), 943.46 (2), 943.47 (2), 943.50 (1m), or
14 943.70 (2) (a) or (am) or (3) (a) that is a felony; or an offense under subch. IV of ch.
15 943 that is a felony.".

16 **5.** Page 17, line 8: delete "if committed not more" and substitute "if the person

17 completed his or her sentence, including any probation, parole, or extended
18 supervision, or was discharged by the department of corrections, less".

19 **6.** Page 17, line 10: delete "if committed not more" and substitute "if the person

20 completed his or her sentence, including any probation, parole, or extended
21 supervision, or was discharged by the department of corrections, less".

22 **7.** Page 23, line 3: after that line insert:

23 **SECTION 37m.** 49.197 (6) of the statutes is created to read:

1 49.197 (6) REPORTING OF SUSPECTED FRAUDS. (a) If any employee of the
2 department, a county, or a tribal governing body reasonably suspects fraudulent
3 activity as described in sub. (1m) or (2) (b), the employee may report the facts and
4 circumstances contributing to that suspicion to any management employee of the
5 department, county, or tribal governing body or to the district attorney.

6 (b) Any person participating in good faith in the making of a report under par.
7 (a) or in initiating, participating in, or testifying in, any action or proceeding in which
8 fraudulent activity as described in sub. (1m) or (2) (b) is alleged shall have immunity
9 from any liability, civil or criminal, that results by reason of the action. For the
10 purpose of any proceeding, civil or criminal, the good faith of any person reporting
11 under par. (a) shall be presumed.

12 (c) The department, a county, a tribal governing body, or an employee of the
13 department, a county, or a tribal governing body may not take disciplinary action
14 against, or threaten to take disciplinary action against, any person because the
15 person in good faith reported any information under par. (a) or initiated, participated
16 in, or testified in, any action or proceeding in which fraudulent activity described in
17 sub. (1m) or (2) (b) was alleged or because the department, county, tribal governing
18 body, or employee believes that the person in good faith reported any information
19 under par. (a) or initiated, participated in, or testified in, such an action or
20 proceeding.

21 (d) Any employee of the department, a county, or a tribal governing body who
22 is subjected to disciplinary action, or who is threatened with disciplinary action, in
23 violation of par. (c) may file a complaint with the department of workforce
24 development under s. 106.54 (9). If that department finds that a violation of par. (c)
25 has been committed, that department may take such action under s. 111.39 as will

1 effectuate the purpose of this section. Section 111.322 (2m) applies to a disciplinary
2 action arising in connection with any proceeding under this paragraph.

3 **SECTION 37p.** 49.845 (4) of the statutes is renumbered 49.845 (4) (a) and
4 amended to read:

5 49.845 (4) (a) Notwithstanding s. 49.197 (1m) and (3), the department of
6 children and families may contract with the department of health services to
7 investigate suspected fraudulent activity on the part of recipients of aid to families
8 with dependent children under s. 49.19 and participants in Wisconsin Works under
9 ss. 49.141 to 49.161 and to conduct activities to reduce payment errors in Wisconsin
10 Works under ss. 49.141 to 49.161, as provided in this section. If any employee of the
11 department of health services reasonably suspects fraudulent activity as described
12 in this paragraph, the employee may report the facts and circumstances contributing
13 to that suspicion to any management employee of that department or to the district
14 attorney.

15 **SECTION 37r.** 49.895 (4) (b), (c) and (d) of the statutes are created to read:

16 49.895 (4) (b) Any person participating in good faith in the making of a report
17 under par. (a) or in initiating, participating in, or testifying in, any action or
18 proceeding in which fraudulent activity as described in par. (a) is alleged shall have
19 immunity from any liability, civil or criminal, that results by reason of the action.
20 For the purpose of any proceeding, civil or criminal, the good faith of any person
21 reporting under par. (a) shall be presumed.

22 (c) The department of health services or an employee of that department may
23 not take disciplinary action against, or threaten to take disciplinary action against,
24 any person because the person in good faith reported any information under par. (a)
25 or initiated, participated in, or testified in, any action or proceeding in which

1 fraudulent activity as described in par. (a) was alleged or because that department
2 or employee believes that the person in good faith reported any information under
3 par. (a) or initiated, participated in, or testified in, such an action or proceeding.

4 (d) Any employee of the department of health services who is subjected to
5 disciplinary action, or who is threatened with disciplinary action, in violation of par.
6 (c) may file a complaint with the department of workforce development under s.
7 106.54 (9). If that department finds that a violation of par. (c) has been committed,
8 that department may take such action under s. 111.39 as will effectuate the purpose
9 of this section. Section 111.322 (2m) applies to a disciplinary action arising in
10 connection with any proceeding under this paragraph.

11 SECTION 37v. 106.54 (9) of the statutes is created to read:

12 106.54 (9) The division shall receive complaints under s. 49.197 (6) (d) or 49.845
13 (4) (d) and shall process the complaints in the same manner that employment
14 discrimination complaints are processed under s. 111.39.

15 SECTION 37x. 111.322 (2m) (bm) of the statutes is created to read:

16 111.322 (2m) (bm) The individual files a complaint or attempts to enforce a
17 right under s. 49.197 (6) (d) or 49.845 (4) (d) or testifies or assists in any action or
18 proceeding under s. 49.197 (6) (d) or 49.845 (4) (d)."

19 8. Page 24, line 11: delete "section" and substitute "sections 20.437 (1) (jm)
20 and".

21 (END)

NOTE

Senator Janch:

The bar with rehabilitation offenses listed in the drafting instructions
are already covered under current law. See s. 48.685 (1) (c) 2,
(4m) (a), and 5 a (5) (a).

48.685

48.685 (1) (c) 2,

Gmy

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa0854/1dn
GMM:jld:jf

October 13, 2009

Senator Jauch:

The bar with rehabilitation offenses listed in the drafting instructions are already covered under current law. See s. 48.685 (1) (c) 2., (4m) (a), and (5) (a).

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

Amendment needed to LRB a0854 for SB 331

On page 16 line 18 after "false information" add "intentionally withholding information from".

Page 4, starting on line 20:

49.197 (6) REPORTING OF SUSPECTED FRAUDS. (intro.) If any employee of the department, a county, or a tribal governing body reasonably suspects fraudulent activity as described in sub. (1m) or (2) (b), **and reports the facts and** circumstances contributing to that suspicion to any management employee of the department, county, or tribal governing body or to the district attorney, **then all of the following apply:**

(a) Any person participating in good faith in the making of a report under par. (a) or in initiating, participating in, or testifying in, any action or proceeding in which fraudulent activity as described in sub. (1m) or (2) (b) is alleged shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under par. (a) shall be presumed.

(b) The department, a county, a tribal governing body, or an employee of the department, a county, or a tribal governing body may not take disciplinary action against, or threaten to take disciplinary action against, any person because the person in good faith reported any information under par. (a) or initiated, participated in, or testified in, any action or proceeding in which fraudulent activity described in sub. (1m) or (2) (b) was alleged or because the department, county, tribal governing body, or employee believes that the person in good faith reported any information under par. (a) or initiated, participated in, or testified in, such an action or proceeding.

(c) Any employee of the department, a county, or a tribal governing body who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of par. (c) may file a complaint with the department of workforce development under s. 106.54 (9). If that department finds that a violation of par. (c) has been committed, that department may take such action under s. 111.39 as will effectuate the purpose of this section. Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under this paragraph.

On page 6, starting on line 1:

49.845 (4) (a) Notwithstanding s. 49.197 (1m) and (3), the department of children and families may contract with the department of health services to investigate suspected fraudulent activity on the part of recipients of aid to families with dependent children under s. 49.19 and participants in Wisconsin Works under ss. 49.141 to 49.161 and to conduct activities to reduce payment errors in Wisconsin

Works under ss. 49.141 to 49.161, as provided in this section. If any employee of the department of health services reasonably suspects fraudulent activity as described in this paragraph, and reports the facts and circumstances contributing to that suspicion to any management employee of that department or to the district attorney, then all of the following apply:

SECTION 37r. 49.895 (4) (a), (b) and (c) of the statutes are created to read:

49.895 (4) (a) Any person participating in good faith in the making of a report under par. (a) or in initiating, participating in, or testifying in, any action or proceeding in which fraudulent activity as described in par. (a) is alleged shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under par. (a) shall be presumed.

(b) The department of health services or an employee of that department may not take disciplinary action against, or threaten to take disciplinary action against, any person because the person in good faith reported any information under par. (a) or initiated, participated in, or testified in, any action or proceeding in which fraudulent activity as described in par. (a) was alleged or because that department or employee believes that the person in good faith reported any information under par. (a) or initiated, participated in, or testified in, such an action or proceeding.

(c) Any employee of the department of health services who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of par. (c) may file a complaint with the department of workforce development under s. 106.54 (9). If that department finds that a violation of par. (c) has been committed, that department may take such action under s. 111.39 as will effectuate the purpose of this section. Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under this paragraph.

SECTION 37v. 106.54 (9) of the statutes is created to read:

106.54 (9) The division shall receive complaints under s. 49.197 (6) (c) or 49.845 (4) (c) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 37x. 111.322 (2m) (bm) of the statutes is created to read:

111.322 (2m) (bm) The individual files a complaint or attempts to enforce a right under s. 49.197 (6) (c) or 49.845 (4) (c) or testifies or assists in any action or proceeding under s. 49.197 (6) (c) or 49.845 (4) (c).”.



SENATE AMENDMENT ,
TO 2009 SENATE BILL 331

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 4, line 1: delete the material beginning with that line and ending with
3 page 5, line 17, and substitute:

4 "SECTION 1d. 20.435 (6) (jm) of the statutes, as affected by 2009 Wisconsin Act
5 28, is amended to read:

6 20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule
7 for the purposes specified in ss. ~~48.685 (2) (am) and (b) 1., (3) (a) and (b), and (5) (a),~~
8 49.45 (47), 50.02 (2), 50.025, 50.031, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5),
9 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and 146.40
10 (4r) (b) and (er), and subch. IV of ch. 50 and to conduct health facilities plan and rule
11 development activities, for accrediting nursing homes, convalescent homes, and
12 homes for the aged, to conduct capital construction and remodeling plan reviews
13 under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or

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1 certifying, and approving facilities, issuing permits, and providing technical
2 assistance, that are not specified under any other paragraph in this subsection. All
3 moneys received under ss. 48.685 (8), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025,
4 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
5 (1) (c), and 50.981, all moneys received from fees for the costs of inspecting, licensing
6 or certifying, and approving facilities, issuing permits, and providing technical
7 assistance, that are not specified under any other paragraph in this subsection, and
8 all moneys received under s. 50.135 (2) shall be credited to this appropriation
9 account.

10 **SECTION 1g.** 20.437 (1) (jm) of the statutes, as affected by 2009 Wisconsin Act
11 28, section 493d, is amended to read:

12 20.437 (1) (jm) *Licensing activities.* All moneys received from licensing
13 activities under ss. 48.60, 48.62, 48.625, and 938.22 (7) ~~and~~, from fees under ss.
14 48.615, 48.625, and 938.22 (7) (b) and (c), and from fees under s. 48.685 (8) charged
15 to entities other than day care centers or day care providers. for the costs of licensing
16 child welfare agencies under s. 48.60, foster homes and treatment foster homes
17 under s. 48.62, group homes under s. 48.625, and shelter care facilities under s.
18 938.22 (7) and for the purposes specified in s. 48.685 (2) (am) and (b) 1., (3) (a) and
19 (b), and (5) (a) with respect to those entities.

20 **SECTION 1j.** 20.437 (1) (jm) of the statutes, as affected by 2009 Wisconsin Acts
21 28, section 476h, and 2009 Wisconsin Act (this act), is repealed and recreated to
22 read:

23 20.437 (1) (jm) *Licensing activities.* All moneys received from licensing
24 activities under ss. 48.60, 48.62, 48.625, and 938.22 (7), from fees under ss. 48.615,
25 48.625, and 938.22 (7) (b) and (c), and from fees under s. 48.685 (8) charged to entities

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1 other than day care centers or day care providers, for the costs of licensing child
2 welfare agencies under s. 48.60, foster homes under s. 48.62, group homes under s.
3 48.625, and shelter care facilities under s. 938.22 (7) and for the purposes specified
4 in s. 48.685 (2) (am) and (b) 1., (3) (a) and (b), and (5) (a) with respect to those entities.

5 **SECTION 1m.** 20.437 (2) (jn) of the statutes, as created by 2009 Wisconsin Act
6 28, is amended to read:

7 20.437 (2) (jn) *Child care licensing and certification activities.* All moneys
8 received from licensing activities under s. 48.65, from certifying activities under s.
9 48.651, ~~and from fees under ss. 48.65 (3) and 48.651 (2).~~ and from fees under s. 48.685
10 (8) charged to day care centers and day care providers for the costs of licensing day
11 care centers under s. 48.65 and of certifying day care providers under s. 48.651 and
12 for the purposes specified in s. 48.685 (2) (am), (ar), and (b) 1. and 2., (3) (am) and
13 (bm), and (5) (a) with respect to day care centers and day care providers.”

14 **2.** Page 6, line 13: after that line insert:

15 “**SECTION 2r.** 48.685 (1) (c) 2. of the statutes is amended to read:

16 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
17 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295,
18 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2), 948.05, 948.051, 948.055, 948.06,
19 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1), 948.30, or
20 948.53.”

21 **3.** Page 15, line 25: after that line insert:

22 “**SECTION 23m.** 48.685 (5) (bm) 4. of the statutes is amended to read:

23 48.685 (5) (bm) 4. A violation of s. 940.19 (3), 1999 stats., or of s. 125.075 (1),
24 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5),

1 or (6), 940.20, 940.203, 940.205, 940.207, or 940.25, a violation of s. 346.63 (1), (2),
 2 (5), or (6) that is a felony under s. 346.65 (2) (am) 5., 6., or 7., or (f), (2j) (d), or (3m),
 3 or an offense under ch. 961 that is a felony, if ~~committed not more~~ the person
 4 completed his or her sentence, including any probation, parole, or extended
 5 supervision, or was discharged by the department of corrections, less than 5 years
 6 before the date of the investigation under sub. (2) (am)."

→ On P. 16, line 18, after "information to", insert "or intentionally withholding information from"

7 **4.** Page 16, line 16: delete "or 943.32 (2)." and substitute "943.201, 943.203,
 8 943.32 (2), or 943.38 (1) or (2); a violation of s. 943.34 (1), 943.395 (1), 943.41 (3) (e),
 9 (4) (a), (5), (6), or (6m), 943.45 (1), 943.455 (2), 943.46 (2), 943.47 (2), 943.50 (1m), or
 10 943.70 (2) (a) or (am) or (3) (a) that is a felony; or an offense under subch. IV of ch.
 11 943 that is a felony."

12 **5.** Page 17, line 8: delete "if committed not more" and substitute "if the person
 13 completed his or her sentence, including any probation, parole, or extended
 14 supervision, or was discharged by the department of corrections, less".

15 **6.** Page 17, line 10: delete "if committed not more" and substitute "if the person
 16 completed his or her sentence, including any probation, parole, or extended
 17 supervision, or was discharged by the department of corrections, less".

18 **7.** Page 23, line 3: after that line insert:

19 "SECTION 37m. 49.197 (6) of the statutes is created to read:

20 49.197 (6) REPORTING OF SUSPECTED FRAUDS. (a) If any employee of the
 21 department, a county, or a tribal governing body reasonably suspects fraudulent
 22 activity as described in sub. (1m) or (2) (b), ^{+ reports the facts} the employee may report the facts and
 23 circumstances contributing to that suspicion to any management employee of the
 24 department, county, or tribal governing body or to the district attorney.

then all of the following apply

1 **b** (b) Any person participating in good faith in the making of a report under par.

2 (a) or in initiating, participating in, or testifying in, any action or proceeding in which
3 fraudulent activity as described in sub. (1m) or (2) (b) is alleged shall have immunity
4 from any liability, civil or criminal, that results by reason of the action. For the
5 purpose of any proceeding, civil or criminal, the good faith of any person reporting
6 under par. (a) shall be presumed.

7 **v** (c) The department, a county, a tribal governing body, or an employee of the
8 department, a county, or a tribal governing body may not take disciplinary action
9 against, or threaten to take disciplinary action against, any person because the
10 person in good faith reported any information under par. (a) or initiated, participated
11 in, or testified in, any action or proceeding in which fraudulent activity described in
12 sub. (1m) or (2) (b) was alleged or because the department, county, tribal governing
13 body, or employee believes that the person in good faith reported any information
14 under par. (a) or initiated, participated in, or testified in, such an action or
15 proceeding.

16 **c** (d) Any employee of the department, a county, or a tribal governing body who
17 is subjected to disciplinary action, or who is threatened with disciplinary action, in
18 violation of par. (c) may file a complaint with the department of workforce
19 development under s. 106.54 (9). If that department finds that a violation of par. (c)
20 has been committed, that department may take such action under s. 111.39 as will
21 effectuate the purpose of this section. Section 111.322 (2m) applies to a disciplinary
22 action arising in connection with any proceeding under this paragraph.

23 **SECTION 37p.** 49.845 (4) of the statutes is renumbered 49.845 (4) (ā) and
24 amended to read:

1 49.845 (4) (a) Notwithstanding s. 49.197 (1m) and (3), the department of
 2 children and families may contract with the department of health services to
 3 investigate suspected fraudulent activity on the part of recipients of aid to families
 4 with dependent children under s. 49.19 and participants in Wisconsin Works under
 5 ss. 49.141 to 49.161 and to conduct activities to reduce payment errors in Wisconsin
 6 Works under ss. 49.141 to 49.161, as provided in this section. If any employee of the
 7 department of health services reasonably suspects fraudulent activity as described
 8 in this paragraph, ^{fraud} the employee may report the facts and circumstances contributing
 9 to that suspicion to any management employee of that department or to the district
 10 attorney. *then all of the bill applies.*

11 **SECTION 37r.** 49.895 (4) ^{a b c} ~~(b), (c) and (d)~~ of the statutes are created to read:

12 49.895 (4) ^a ~~(b)~~ Any person participating in good faith in the making of a report
 13 under par. (a) or in initiating, participating in, or testifying in, any action or
 14 proceeding in which fraudulent activity as described in par. (a) is alleged shall have
 15 immunity from any liability, civil or criminal, that results by reason of the action.
 16 For the purpose of any proceeding, civil or criminal, the good faith of any person
 17 reporting under par. (a) shall be presumed.

18 ~~(e)~~ The department of health services or an employee of that department may
 19 not take disciplinary action against, or threaten to take disciplinary action against,
 20 any person because the person in good faith reported any information under par. (a)
 21 or initiated, participated in, or testified in, any action or proceeding in which
 22 fraudulent activity as described in par. (a) was alleged or because that department
 23 or employee believes that the person in good faith reported any information under
 24 par. (a) or initiated, participated in, or testified in, such an action or proceeding.



State of Wisconsin
2009-2010 LEGISLATURE

SN 10114

TH 10/15 AM

LRBa0854/T
GMM:jld:jf
RMR

SENATE AMENDMENT,
TO 2009 SENATE BILL 331

1 At the locations indicated, amend the bill as follows: ✓

2 1. Page 4, line 1: delete the material beginning with that line and ending with
3 page 5, line 17, and substitute:

4 "SECTION 1d. 20.435 (6) (jm) of the statutes, as affected by 2009 Wisconsin Act
5 28, is amended to read:

6 20.435 (6) (jm) *Licensing and support services*. The amounts in the schedule
7 for the purposes specified in ss. ~~48.685 (2) (am) and (b) 1., (3) (a) and (b), and (5) (a),~~
8 49.45 (47), 50.02 (2), 50.025, 50.031, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5),
9 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and 146.40
10 (4r) (b) and (er), and subch. IV of ch. 50 and to conduct health facilities plan and rule
11 development activities, for accrediting nursing homes, convalescent homes, and
12 homes for the aged, to conduct capital construction and remodeling plan reviews
13 under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or

1 certifying, and approving facilities, issuing permits, and providing technical
2 assistance, that are not specified under any other paragraph in this subsection. All
3 moneys received under ss. 48.685 (8), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025,
4 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
5 (1) (c), and 50.981, all moneys received from fees for the costs of inspecting, licensing
6 or certifying, and approving facilities, issuing permits, and providing technical
7 assistance, that are not specified under any other paragraph in this subsection, and
8 all moneys received under s. 50.135 (2) shall be credited to this appropriation
9 account.

10 **SECTION 1g.** 20.437 (1) (jm) of the statutes, as affected by 2009 Wisconsin Act
11 28, section 493d, is amended to read:

12 20.437 (1) (jm) *Licensing activities.* All moneys received from licensing
13 activities under ss. 48.60, 48.62, 48.625, and 938.22 (7) ~~and~~, from fees under ss.
14 48.615, 48.625, and 938.22 (7) (b) and (c), and from fees under s. 48.685 (8) charged
15 to entities other than day care centers or day care providers, for the costs of licensing
16 child welfare agencies under s. 48.60, foster homes and treatment foster homes
17 under s. 48.62, group homes under s. 48.625, and shelter care facilities under s.
18 938.22 (7) and for the purposes specified in s. 48.685 (2) (am) and (b) 1., (3) (a) and
19 (b), and (5) (a) with respect to those entities.

20 **SECTION 1j.** 20.437 (1) (jm) of the statutes, as affected by 2009 Wisconsin Act 28,
21 section 476h, and 2009 Wisconsin Act ... (this act), is repealed and recreated to
22 read:

23 20.437 (1) (jm) *Licensing activities.* All moneys received from licensing
24 activities under ss. 48.60, 48.62, 48.625, and 938.22 (7), from fees under ss. 48.615,
25 48.625, and 938.22 (7) (b) and (c), and from fees under s. 48.685 (8) charged to entities

1 other than day care centers or day care providers, for the costs of licensing child
2 welfare agencies under s. 48.60, foster homes under s. 48.62, group homes under s.
3 48.625, and shelter care facilities under s. 938.22 (7) and for the purposes specified
4 in s. 48.685 (2) (am) and (b) 1., (3) (a) and (b), and (5) (a) with respect to those entities.

5 **SECTION 1m.** 20.437 (2) (jn) of the statutes, as created by 2009 Wisconsin Act
6 28, is amended to read:

7 20.437 (2) (jn) *Child care licensing and certification activities.* All moneys
8 received from licensing activities under s. 48.65, from certifying activities under s.
9 48.651, ~~and from fees under ss. 48.65 (3) and 48.651 (2), and from fees under s. 48.685~~
10 (8) charged to day care centers and day care providers for the costs of licensing day
11 care centers under s. 48.65 and of certifying day care providers under s. 48.651 and
12 for the purposes specified in s. 48.685 (2) (am), (ar), and (b) 1. and 2., (3) (am) and
13 (bm), and (5) (a) with respect to day care centers and day care providers.”.

14 **2.** Page 6, line 13: after that line insert:

15 “**SECTION 2r.** 48.685 (1) (c) 2. of the statutes is amended to read:

16 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
17 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295,
18 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2), 948.05, 948.051, 948.055, 948.06,
19 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1), 948.30, or
20 948.53.”.

21 **3.** Page 15, line 25: after that line insert:

22 “**SECTION 23m.** 48.685 (5) (bm) 4. of the statutes is amended to read:

23 48.685 (5) (bm) 4. A violation of s. 940.19 (3), 1999 stats., or of s. 125.075 (1),
24 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5),

#. Page 16, line 18: after "information to" insert
"or the intentional withholding of information from".

move

1 or (6), 940.20, 940.203, 940.205, 940.207, or 940.25, a violation of s. 346.63 (1), (2),
2 (5), or (6) that is a felony under s. 346.65 (2) (am) 5., 6., or 7., or (f), (2j) (d), or (3m),
3 or an offense under ch. 961 that is a felony, if ~~committed not more~~ the person
4 completed his or her sentence, including any probation, parole, or extended
5 supervision, or was discharged by the department of corrections, less than 5 years
6 before the date of the investigation under sub. (2) (am).”.

7 4. Page 16, line 16: delete “or 943.32 (2).” and substitute “943.201, 943.203,
8 943.32 (2), or 943.38 (1) or (2); a violation of s. 943.34 (1), 943.395 (1), 943.41 (3) (e),
9 (4) (a), (5), (6), or (6m), 943.45 (1), 943.455 (2), 943.46 (2), 943.47 (2), 943.50 (1m), or
10 943.70 (2) (a) or (am) or (3) (a) that is a felony; or an offense under subch. IV of ch.
11 943 that is a felony.”.

12 5. Page 17, line 8: delete “if committed not more” and substitute “if the person
13 completed his or her sentence, including any probation, parole, or extended
14 supervision, or was discharged by the department of corrections, less”.

15 6. Page 17, line 10: delete “if committed not more” and substitute “if the person
16 completed his or her sentence, including any probation, parole, or extended
17 supervision, or was discharged by the department of corrections, less”.

18 7. Page 23, line 3: after that line insert:

19 “SECTION 37m. 49.197 (6) of the statutes is created to read:

20 49.197 (6) REPORTING OF SUSPECTED FRAUDS. (a) If any employee of the
21 department, a county, or a tribal governing body reasonably suspects fraudulent
22 activity as described in sub. (1m) or (2) (b), ~~the employee may report~~ the facts and
23 circumstances contributing to that suspicion to any management employee of the
24 department, county, or tribal governing body or to the district attorney.

into. and reports

, all of the following apply:

Sub. (6) (intro.)

(a)

1 Any person participating in good faith in the making of a report under ~~par~~
 2 ~~or~~ in initiating, participating in, or testifying in, any action or proceeding in which
 3 fraudulent activity as described in sub. (1m) or (2) (b) is alleged shall have immunity
 4 from any liability, civil or criminal, that results by reason of the action. For the
 5 purpose of any proceeding, civil or criminal, the good faith of any person reporting
 6 under ~~par (a)~~ shall be presumed.

Sub. (6) (intro.)

✓ LPS -
f was 3 times

(b)

7 The department, a county, a tribal governing body, or an employee of the
 8 department, a county, or a tribal governing body may not take disciplinary action
 9 against, or threaten to take disciplinary action against, any person because the
 10 person in good faith reported any information under ~~par (a)~~ or initiated, participated
 11 in, or testified in, any action or proceeding in which fraudulent activity described in
 12 sub. (1m) or (2) (b) was alleged or because the department, county, tribal governing
 13 body, or employee believes that the person in good faith reported any information
 14 under ~~par (a)~~ or initiated, participated in, or testified in, such an action or
 15 proceeding.

(c)

16 Any employee of the department, a county, or a tribal governing body who
 17 is subjected to disciplinary action, or who is threatened with disciplinary action, in
 18 violation of ~~par (a)~~ ^(b) may file a complaint with the department of workforce
 19 development under s. 106.54 (9). If that department finds that a violation of ~~par (a)~~ ^(b)
 20 has been committed, that department may take such action under s. 111.39 as will
 21 effectuate the purpose of this section. Section 111.322 (2m) applies to a disciplinary
 22 action arising in connection with any proceeding under this paragraph.

(intro.)

23 SECTION 37p. 49.845 (4) of the statutes is renumbered 49.845 (4) ~~and~~ and
 24 amended to read:

(Intro.)

and reports

1 49.845 (4) ~~(a)~~ Notwithstanding s. 49.197 (1m) and (3), the department of
 2 children and families may contract with the department of health services to
 3 investigate suspected fraudulent activity on the part of recipients of aid to families
 4 with dependent children under s. 49.19 and participants in Wisconsin Works under
 5 ss. 49.141 to 49.161 and to conduct activities to reduce payment errors in Wisconsin
 6 Works under ss. 49.141 to 49.161, as provided in this section. If any employee of the
 7 department of health services reasonably suspects fraudulent activity as described
 8 in this paragraph ~~the employee may report~~ the facts and circumstances contributing
 9 to that suspicion to any management employee of that department or to the district
 10 attorney) all of the following apply: (a), (b) and (c)

SECTION 37r. 49.895 (4) ~~(a), (c) and (d)~~ of the statutes are created to read:

11 SECTION 37r. 49.895 (4) ~~(a), (c) and (d)~~ of the statutes are created to read:
 12 49.895 (4) ~~(a)~~ Any person participating in good faith in the making of a report
 13 under ~~par. (a)~~ or in initiating, participating in, or testifying in, any action or
 14 proceeding in which fraudulent activity as described in ~~par. (a)~~ is alleged shall have
 15 immunity from any liability, civil or criminal, that results by reason of the action.
 16 For the purpose of any proceeding, civil or criminal, the good faith of any person
 17 reporting under ~~par. (a)~~ shall be presumed.

18 ~~(b), (c)~~ The department of health services or an employee of that department may
 19 not take disciplinary action against, or threaten to take disciplinary action against,
 20 any person because the person in good faith reported any information under ~~par. (a)~~
 21 or initiated, participated in, or testified in, any action or proceeding in which
 22 fraudulent activity as described in ~~par. (a)~~ was alleged or because that department
 23 or employee believes that the person in good faith reported any information under
 24 ~~par. (a)~~ or initiated, participated in, or testified in, such an action or proceeding.

LPS-
(has 3
lines)

Sub. (1) (Intro.)

Sub. (4) (Intro.)

d(a)

1 ~~4~~ (c), (d) Any employee of the department of health services who is subjected to
 2 disciplinary action, or who is threatened with disciplinary action, in violation of par.
 3 (b) (c) may file a complaint with the department of workforce development under s.
 4 106.54 (9). If that department finds that a violation of par. (c) has been committed,
 5 that department may take such action under s. 111.39 as will effectuate the purpose
 6 of this section. Section 111.322 (2m) applies to a disciplinary action arising in
 7 connection with any proceeding under this paragraph.

8 **SECTION 37v.** 106.54 (9) of the statutes is created to read:

9 106.54 (9) The division shall receive complaints under s. 49.197 (6) (c) or 49.845
 10 (4) (c) and shall process the complaints in the same manner that employment
 11 discrimination complaints are processed under s. 111.39.

12 **SECTION 37x.** 111.322 (2m) (bm) of the statutes is created to read:

13 111.322 (2m) (bm) The individual files a complaint or attempts to enforce a
 14 right under s. 49.197 (6) (c) or 49.845 (4) (c) or testifies or assists in any action or
 15 proceeding under s. 49.197 (6) (c) or 49.845 (4) (c)."

16 **8.** Page 24, line 11: delete "section" and substitute "sections 20.437 (1) (jm)
 17 and".

18 (END)