

## 2011 DRAFTING REQUEST

### Assembly Substitute Amendment (ASA-AB30)

Received: 03/22/2011

Received By: **gmalaise**

Wanted: 03/25/2011

Companion to LRB:

For: **Dale Kooyenga (608) 266-9180**

By/Representing: **Bill Neville**

May Contact:

Drafter: **gmalaise**

Subject: **Children - out-of-home placement**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kooyenga@legis.wi.gov**

Carbon copy (CC:) to: -

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Power of attorney for care and custody of child; form for; limitations on

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#### Instructions:

See attached

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#### 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 03/23/2011	jdyer 03/24/2011		_____			
/1			mduchek 03/24/2011	_____	sbasford 03/24/2011	sbasford 03/24/2011	
/2	gmalaise 03/31/2011	jdyer 04/01/2011	rschluet 04/01/2011	_____	sbasford 04/01/2011	sbasford 04/01/2011	
/3	gmalaise 04/08/2011	jdyer 04/11/2011	rschluet 04/11/2011	_____	lparisi 04/11/2011	lparisi 04/11/2011	

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/4	gmalaise 04/19/2011	jdyer 04/20/2011	jfrantze 04/20/2011	_____	ggodwin 04/20/2011	ggodwin 04/20/2011	

FE Sent For:

<END>

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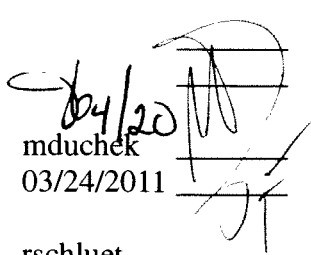
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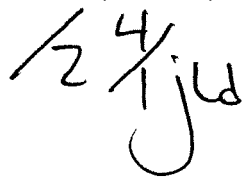
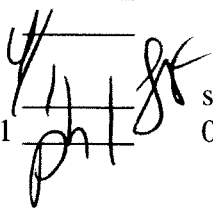
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gmalaise

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24 jld

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8  
[Signature]

<END>

FE Sent For:

## CHILDREN & THE LAW SECTION

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Date: March 9, 2011

TO: Representative Dale Kooyenga

FR: Children & the Law Section  
Attorney Henry Plum  
Attorney Theresa Roetter  
ADA Mary Sowinski

RE: AB 30 – POA transfer of custody

The Children & the Law Section (CLS) of the State Bar of Wisconsin is comprised of attorneys who have a special interest in laws that affect children. Section members include judges, court commissioners, prosecutors, guardians ad litem, agency attorneys and private practice attorneys who represent various parties including children, parents, and grandparents as well as agencies that serve children. We share your interest in finding solutions to protect the best interests of children.

A bit of background for you – we have been working for several years on a comprehensive re-write of the juvenile guardianship statutes. Recognizing the need for maximum input from other entities for such a comprehensive proposal, we wanted our proposed work in the public forum for others to review and contemplate so Senator Taylor introduced for us 2009 SB 706 on the last day of the 2009-10 session. Over the past 10-12 months, we have received feedback and suggested changes that the workgroup has incorporated into the original draft. We do not have the final redraft of the bill yet since LRB drafting attorney Gordon Malaise has been otherwise occupied but we hope to receive it soon.

The language for AB 30 appears to be pulled directly from 2009 SB 706. Clearly, the Children & the Law Section supports creating a power of attorney (“POA”) which will allow parents to grant another adult permission to have placement of and make decisions for their minor child. However, since March 2009 we have continued to work on the language originally proposed in SB 706, and we have suggestions for improvements to the language of AB 30 including a draft of a statutory form for people to use.

As you are aware, under current law, if a parent wants their child to reside with another adult for a period of time longer than thirty days, petitioning the court for a formal guardianship is the only legal option which will allow the other adult to enroll the child in school, seek medical care and provide health insurance. Assembly Bill 30 seeks to create a power of attorney (POA) which will allow parents to grant another adult permission to have placement of and make decisions for their minor child.

Children often reside with other adults for a limited period of time. Some of the many reasons include situations where the custodial parent is unavailable due to the parent's active military duty, medical treatment, jail/prison sentence, substance abuse, mental health treatment, or if the child's educational needs or desire for intensive sports training demand a different living



STATE BAR OF WISCONSIN



arrangement. A POA will allow a parent to make plans for their child's care without the expense and delay of court proceedings and will decrease the number of guardianships thereby reducing court congestion.

We offer for your consideration the following suggested revisions:

1. Please consider requiring a POA to be in writing and in a form substantially similar to the following to ensure uniformity and to ensure schools, medical providers and others who see the form recognize its validity. Please see attached draft form.

2. One change to the POA which the Section intended to include in the redraft was limiting the authority to grant a POA only to a parent who has legal custody of their child. This will prevent a non-custodial parent from unilaterally transferring the child's placement from the custodial parent. Providing otherwise would open the door to significant family court litigation which would likely include the person named as POA. We suggest adding language such as "a parent with legal custody of a minor may grant another adult a power of attorney under this section" to provide the needed clarity.

3. Where unrelated adults would be caring for children in a potential children's home setting, please consider making these providers permissive reporters of child abuse and/or neglect. We are concerned a parent against whom a report is made could simply revoke the POA and resume physical custody of the child if the care providers are mandatory reporters. That would create inherent risks to the child. However, we do believe there should be an opportunity for the person providing care under the POA to report possible abuse or neglect under the reporter statutes. We believe a solution would be to state that "a person granted the POA for a minor is a permissive reporter under 48.981(2)(c)".

They already are -  
Everybody is

4. We recommend including specific language in the statute creating the POA which clarifies that executing of a POA would not prevent or obstruct:

- (a) A child abuse or neglect investigation under Wis. Stats. 48.981 from proceeding;
- (b) An intake inquiry under Wis. Stat 48.24~~9~~ from being completed;
- (c) A court proceeding and making findings under Wis. Stats 48.205, and
- (d) A court from assuming jurisdiction and making findings under Wis. Stats. 48.13.

This proposed amendment language would not infringe on the custodial parent's authority to make decisions for their child. These provisions would, instead, provide protection for the child who might otherwise be abused or exploited by a parent or other individual who would use a POA to prevent authorities from intervening in abuse or neglect situations (i.e. such circumstances might include trafficking of children for sexual abuse or illegal adoptions, child pornography and other forms of child exploitation). Adding the language we propose here, will allow a child protective services agency to intervene only in those circumstances in which child abuse or neglect referrals have been made and would not trigger agency involvement in non abuse or neglect circumstances.

5. AB 30 expands our Section's original idea of assisting parents with temporary "placement" to include long term placement in a setting which might be considered a group home for children. There are no limits on when parents could use this option, thus parents

whose children have behavioral or substance abuse problems could simply sign a POA and pass responsibility for the child to another.

We suggest clarifying whether a POA under AB 30 would apply to parents who wish to place their child in a residential care center or apply to parents who wish to place their child in a group home or foster home. The current draft is unclear and, if such placement were permitted, could create additional fiscal responsibilities for the municipalities depending on the parent's ability to afford such treatment. We want to avoid a POA being used inappropriately.

We would appreciate working with you on any amendments to AB 30 in order to strengthen the protections of children while still accomplishing the goal of creating a workable power of attorney.

Thank you for your interest. We look forward to working with you.

\*\*\*\*\*

*The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.*

*The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.*

*If you have questions about this memorandum, please contact Sandy Lonergan, Government Relations Coordinator, at [slonergan@wisbar.org](mailto:slonergan@wisbar.org) or (608) 250-6045.*

DRAFT

POWER OF ATTORNEY  
DELEGATING PARENTAL AUTHORITY  
Authorized by section 48.979 of the Wisconsin Statutes

NAME OF CHILD(REN).

This power of attorney is for the purpose of providing for the care and protection of

\_\_\_\_\_, born \_\_\_\_\_  
\_\_\_\_\_, born \_\_\_\_\_  
\_\_\_\_\_, born \_\_\_\_\_.

DELEGATION OF POWER TO AN ADULT.

I state that I have legal custody of my child(ren) named above. *Only a parent with legal custody may use this form.*

**I delegate my parental authority to**

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone number(s)  
\_\_\_\_\_  
E-mail address  
\_\_\_\_\_  
Relationship to child(ren)

The parental power I am delegating is as follows:

FULL

\_\_\_ Full parental power and authority, including care and custody, but not the power to consent to marriage, adoption or military service; **or**

PARTIAL

Select Delegated Power(s)

- \_\_\_ The ability to consent to all medical care, or only the ability to consent to the following selected (checked) powers:
  - \_\_\_ The ability to consent only to ordinary or routine medical care, excluding major surgical procedures, extraordinary procedures and experimental treatment.
  - \_\_\_ The ability to consent to emergency blood transfusion.
  - \_\_\_ The ability to consent to dental care.
  - \_\_\_ The ability to consent to the disclosure of health information about the child(ren).
- \_\_\_ The ability to consent to educational and vocational services and employment.
- \_\_\_ The ability to consent to the disclosure of nonmedical, but otherwise confidential information about the child(ren).
- \_\_\_ The ability to provide care and custody.
- \_\_\_ The ability to consent to the child obtaining a vehicle operator's license.
- \_\_\_ The ability to travel outside the State of Wisconsin with the child(ren).
- \_\_\_ The ability to obtain substitute care such as daycare.

Other specifically delegated powers or limits on delegated power:

(  Or see Attached.)

\_\_\_\_\_  
\_\_\_\_\_

The delegation of parental power does not replace the authority of any parent with legal custody or the authority of a non-custodial parent authorized by court order or by law.

**TERM OF THIS DELEGATION.**

This Power of Attorney will remain in effect until \_\_\_\_\_ (not to exceed one year.) If no termination date is given, or if the date given exceeds one year from the effective date of this document, then this Power of Attorney will remain in effect for a period of one year. This Power of Attorney may be revoked in writing at any time by a parent with legal custody, except to the extent that it has already been relied on with regard to a particular act.

**EXECUTION:**

This document takes effect \_\_\_\_\_. (If there is no effective date given, then this document takes effect immediately.)

Executed by parent before a Notary Public:

\_\_\_\_\_  
Name

**Signed before me this**

\_\_\_\_\_  
Date

**Notary Public in the State of Wisconsin  
My commission expires: \_\_\_\_\_.**

Ways I can be located:

\_\_\_\_\_  
Address(es)

\_\_\_\_\_  
Telephone number(s)

\_\_\_\_\_  
E-mail address(es)

Or, by contacting:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone number

\_\_\_\_\_  
E-mail address

Or, I cannot be located.

\_\_\_\_\_  
Name

**Signed before me this**

\_\_\_\_\_  
Date

**Notary Public in the State of Wisconsin  
My commission expires: \_\_\_\_\_.**

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Telephone number(s)

\_\_\_\_\_  
E-mail address(es)

Or, by contacting:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone number

\_\_\_\_\_  
E-mail address

Or, I cannot be located.

## Malaise, Gordon

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**From:** Neville, William  
**Sent:** Monday, March 21, 2011 12:33 PM  
**To:** Malaise, Gordon  
**Subject:** Substitute Amendment

Gordon,

I have some additional notes regarding our conversation this morning dealing with a substitute amendment for AB30.

In regards to the first point – “must use the prescribed form or a form substantially similar”

Third point – is necessary in keeping with current state law; keeps good, honest people from being liable in criminal and civil court

Fifth point – prevents high income parents from transferring kids to low income parents in order to qualify for assistance. **This point needs to add military service to the bill (i.e. those serving the country abroad may be eligible).**

Thank you again for taking the time to go over the amendments and the process this morning.

Bill Neville  
Legislative Assistant  
Office of State Representative Dale Kooyenga  
14th Assembly District  
17 North, State Capitol  
608-266-9180

## Malaise, Gordon

---

**From:** Neville, William  
**Sent:** Tuesday, March 22, 2011 12:09 PM  
**To:** Malaise, Gordon  
**Cc:** Kooyenga, Dale  
**Subject:** RE: AB 30

Ok, sounds good

Bill Neville  
Legislative Assistant  
Office of State Representative Dale Kooyenga  
14th Assembly District  
17 North, State Capitol  
608-266-9180

---

**From:** Malaise, Gordon  
**Sent:** Tuesday, March 22, 2011 11:47 AM  
**To:** Neville, William  
**Subject:** RE: AB 30

Bill:

Maybe on the form simply insert "(optional)" before or after the space for the notary's signature.

Gordon

---

**From:** Neville, William  
**Sent:** Tuesday, March 22, 2011 11:44 AM  
**To:** Malaise, Gordon  
**Subject:** AB 30

Gordon,

The Representative would like the requirement for a notary to be recommended, but not mandatory.

I pasted email dialogue regarding this issues below:

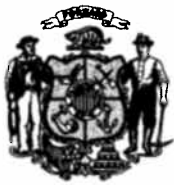
“The Notary is not a requirement in the law -- the form has a place for a notary, but I think we could add some language on the form (not in the bill) that a notary is not required and clarify in the language of the bill that the notary is not required.

Yes - I do not think having a notary present at each placement is possible in the practical sense. I don't exactly have one on call and it would be an added expense. I also know getting a bio family to sign a form that gives short term guardianship is difficult enough without the added stress of having to do so in front of a notary. No other SF state requires that.”

Thank you for your time.

Bill Neville  
Legislative Assistant

Office of State Representative Dale Kooyenga  
14th Assembly District  
17 North, State Capitol  
608-266-9180



State of Wisconsin  
2011 - 2012 LEGISLATURE

In 3/23

Wanted Re. 3/25



LRBs0088/3

GMM #...

Jld

ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2011 ASSEMBLY BILL 30

LX

Gen

1 AN ACT ...; relating to: delegation by a parent who has legal custody of a child  
2 of powers regarding the care and custody of the child by a power of attorney. ✓

*the parent's*  
**Analysis by the Legislative Reference Bureau**

Under current law, a parent may petition the court assigned to exercise jurisdiction under the Children's Code (juvenile court) for the appointment of a guardian for the child. A guardian has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare. A guardian's authority includes the authority to consent to major medical, psychiatric, and surgical treatment for the child and the child obtaining a motor vehicle operator's license. A guardian also has the rights and responsibilities of legal custody, which include the right and duty to protect, train, and discipline the child and to provide food, shelter, legal services, education, and ordinary medical and dental care for the child. ✓

This substitute amendment permits a parent who has legal custody of a child, by a properly executed power of attorney, to delegate to another person, for a period not to exceed one year, any of his or her powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion on or for the child, the termination of parental rights to the child, or the enlistment of the child in the U.S. armed forces. ✓  
The substitute amendment provides that such a delegation of powers does not



\* deprive the parent of any of his or her powers regarding the care and custody of the child and does not prevent or supersede: 1) an investigation of suspected or threatened abuse or neglect of the child under the child abuse and neglect reporting law; 2) the child from being taken into and held in custody under the Children's Code or the Juvenile Justice Code; 3) a juvenile court intake worker from conducting an intake inquiry to determine whether the available facts establish juvenile court jurisdiction over the child; or 4) the juvenile court from exercising its child or juvenile in need of protection or services jurisdiction over the child.

Under current law, a person who provides care and maintenance for four or fewer children must obtain a license to operate a foster home. Current law, however, permits a relative or guardian of a child to provide care and maintenance for a child without obtaining a license to operate a foster home. This substitute amendment exempts a person who is delegated care and custody of a child as provided in the substitute amendment from the requirement that the person obtain a license to operate a foster home in order to provide care and maintenance for the child. The substitute amendment, however, prohibits a parent from placing a child in a foster home, group home, or inpatient treatment facility by means of a delegation of powers as provided in the substitute amendment. Under the substitute amendment, those placements may be made only means of a juvenile court order or a voluntary agreement or admission as provided under current law.

Under current law, certain persons who have reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or who have reason to believe that such a child has been threatened with abuse or neglect and that abuse or neglect will occur must report that suspected or threatened abuse or neglect to the county department of human services or social services, the sheriff, or the local police department. Any other person may report suspected or threatened abuse or neglect of a child. This bill exempts a person who is delegated care and custody of a child as provided in the substitute amendment from the requirement that he or she report any suspected or threatened abuse or neglect of the child. Instead, the substitute amendment permits such a person to report any suspected or threatened abuse or neglect of the child.

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

1 SECTION 1. 48.60 (2) (a) of the statutes is amended to read:

2 48.60 (2) (a) A relative or, guardian, or person delegated care and custody of  
 3 a child under s. 48.979 who provides care and maintenance for such children.

4 SECTION 2. 48.62 (2) of the statutes is amended to read:

1           48.62 (2) A relative ~~or~~, a guardian of a child, or a person delegated care and  
2 custody of a child under s. 48.979 who provides care and maintenance for the child  
3 is not required to obtain the license specified in this section. The department, county  
4 department, or licensed child welfare agency as provided in s. 48.75 may issue a  
5 license to operate a foster home to a relative who has no duty of support under s. 49.90  
6 (1) (a) and who requests a license to operate a foster home for a specific child who is  
7 either placed by court order or who is the subject of a voluntary placement agreement  
8 under s. 48.63. The department, a county department, or a licensed child welfare  
9 agency may, at the request of a guardian appointed under s. 48.977 or 48.978, ch. 54,  
10 or ch. 880, 2003 stats., license the guardian's home as a foster home for the guardian's  
11 minor ward who is living in the home and who is placed in the home by court order.  
12 Relatives with no duty of support and guardians appointed under s. 48.977 or 48.978,  
13 ch. 54, or ch. 880, 2003 stats., who are licensed to operate foster homes are subject  
14 to the department's licensing rules.

15           **SECTION 3.** 48.625 (3) <sup>✓</sup> of the statutes is amended to read:

16           48.625 (3) This section does not apply to a foster home licensed under s. 48.62  
17 (1) <sup>✓</sup> or to a relative or guardian of a child or a person delegated care and custody of  
18 a child under s. 48.979 <sup>✓</sup> who provides care and maintenance for the child.

19           **SECTION 4.** 48.63 (2) <sup>✓</sup> of the statutes is amended to read:

20           48.63 (2) No person may place a child or offer or hold himself or herself out as  
21 able to place a child, except as provided in this section. Enrollment of a child by a  
22 parent or guardian in an educational institution ~~shall~~ and delegation of care and  
23 custody of a child to an agent under s. 48.979 <sup>✓</sup> do not constitute a placement for the  
24 purposes of this section.

25           **SECTION 5.** 48.979 of the statutes is created to read:

1           **48.979 Delegation of power by parent.** (1) (a) A parent who has legal  
2 custody of a child, by a properly executed power of attorney, may delegate to an agent,  
3 for a period not to exceed one year, any of his or her powers regarding the care and  
4 custody of the child, except the power to consent to the marriage or adoption of the  
5 child, the performance or inducement of an abortion on or for the child, the  
6 termination of parental rights to the child, or the enlistment of the child in the U.S.  
7 armed forces. A delegation of powers under this paragraph<sup>✓</sup> does not deprive the  
8 parent of any of his or her powers regarding the care and custody of the child.

9           (b) A parent who has legal custody of a child may not place the child in a foster  
10 home, group home, or inpatient treatment facility by means of a delegation of powers  
11 under par. (a).<sup>✓</sup> Those placements may be made only by means of a court order or as  
12 provided in s. 48.63 or 51.13.

13           (c) A delegation of powers under par. (a)<sup>✓</sup> does not prevent or super~~ede~~<sup>ede</sup> any of  
14 the following:

15           1. An agency, a sheriff, or a police department from receiving and investigating  
16 a report of suspected or threatened abuse or neglect of the child under s. 48.981.

17           2. The child from being taken into and held in custody under ss. 48.19 to 48.21  
18 or 938.19 to 938.21.

19           3. An intake worker from conducting an intake inquiry under s. 48.24 or 938.24.

20           4. A court from exercising jurisdiction over the child under s. 48.13 or 938.13.

21           (d) A parent who has delegated his or her powers regarding the care and  
22 custody of a child under par. (a) may revoke that delegation at any time by executing  
23 a written revocation and notifying the agent in writing of the revocation. A written  
24 revocation invalidates the delegation of powers except with respect to acts already  
25 taken in reliance on the delegation of powers.

1 (2) A power of attorney complies with sub. (1) (a) if the power of attorney  
2 substantially conforms to the following form:

3 **POWER OF ATTORNEY**

4 **DELEGATING PARENTAL POWER**

5 *AUTHORIZED BY S. 48.979, WIS. STATS.*

6 NAME(S) OF CHILD(REN)

7 This power of attorney is for the purpose of providing for the care and custody  
8 of:

9 ✓ Name, address, and date of birth of child ....

10 ✓ Name, address, and date of birth of child ....

11 ✓ Name, address, and date of birth of child ....

12 **DELEGATION OF POWER TO AGENT**

13 I, .... (name and address of parent), state that I have legal custody of the  
14 child(ren) named above. (*Only a parent who has legal custody may use this form.*)

15 ✓ I delegate my parental power to:

16 ✓ Name of agent ....

17 ✓ Agent's address ....

18 ✓ Agent's telephone number(s) ....

19 ✓ Agent's e-mail address ....

20 ✓ Relationship of agent to child(ren) ....

21 ✓ The parental power I am delegating is as follows:

22 FULL

23 (*Check if you want to delegate full parental power regarding the care and*  
24 *custody of the child(ren) names above.*)



1 This delegation of parental powers does not deprive a custodial or noncustodial  
2 parent of any of his or her powers regarding the care and custody of the child,  
3 whether granted by court order or force of law.

4 THIS DOCUMENT MAY NOT BE USED TO DELEGATE THE POWER TO  
5 CONSENT TO THE MARRIAGE OR ADOPTION OF THE CHILD(REN), THE  
6 PERFORMANCE OR INDUCEMENT OF AN ABORTION ON OR FOR THE  
7 CHILD(REN), THE TERMINATION OF PARENTAL RIGHTS TO THE  
8 CHILD(REN), THE ENLISTMENT OF THE CHILD(REN) IN THE U.S. ARMED  
9 FORCES OR TO PLACE THE CHILD(REN) IN A FOSTER HOME, GROUP HOME,  
10 OR INPATIENT TREATMENT FACILITY. ✓

11 EFFECTIVE DATE AND TERM OF THIS DELEGATION

12 This Power of Attorney ✓ takes effect on .... and will remain in effect until .... If  
13 no termination date is given or if the termination date given is more than one year  
14 after the effective date of this Power of Attorney, this Power of Attorney will remain  
15 in effect for a period of one year after the effective date. This Power of Attorney may  
16 be revoked in writing at any time by a parent who has legal custody of the child(ren)  
17 and such a revocation invalidates the delegation of parental powers made by this  
18 Power of Attorney, except with respect to acts already taken in reliance on this Power  
19 of Attorney. ✓

20 SIGNATURE(S) OF PARENT(S)

- 21 ✓ Signature of parent .... Date ....
- 22 ✓ Parent's name printed ....
- 23 ✓ Parent's address ....
- 24 ✓ Parent's telephone number ....
- 25 Parent's e-mail address ....

1 Signature of parent .... ✓ Date ....

2 Parent's name printed ....

3 Parent's address ....

4 Parent's telephone number ....

5 Parent's e-mail address ....

6 WITNESSING OF SIGNATURE(S) (OPTIONAL) ✓

7 State of ....

8 County of ....

9 This document was signed before me on .... (date) by .... (name(s) of parent(s)).

10 Signature of notary ....

11 My commission expires: ....

12 STATEMENT OF AGENT ✓

13 I, .... (name and address of agent), ✓ understand that .... (name(s) of parent(s)) ✓ has

14 (have) delegated to me the powers specified in this Power of Attorney regarding the

15 (15) care and custody of .... (name(s) of child(ren)) ← parenthesis I further understand that this Power

16 of Attorney may be revoked in writing at any time by a parent who has legal custody

17 (17) of .... (name(s) of child(ren)) ← paren I hereby declare that I have read this Power of Attorney,

18 understand the powers delegated to me by this Power of Attorney, am fit, willing, and

19 able to undertake those powers, and accept those powers.

20 Agent's signature .... ✓ Date ....

21 APPENDIX ✓

22 (Here the parent(s) may indicate where they may be located during the term of  
23 the Power of Attorney if different from the address(es) set forth above.)

24 .... I can be located at:

25 ✓ Address(es) ....

1 Telephone number(s) ....

2 E-mail address(es) ....

3 .... Or, by contacting:

4 Name ....

5 Address ....

6 Telephone number ....

7 E-mail address ....

8 .... Or, I cannot be located ✓

9 **SECTION 6.** 48.981 (2) (a) (intro.) of the statutes is amended to read: ✓

10 48.981 (2) (a) (intro.) Any of the following persons who has reasonable cause  
11 to suspect that a child seen by the person in the course of professional duties has been  
12 abused or neglected or who has reason to believe that a child seen by the person in  
13 the course of professional duties has been threatened with abuse or neglect and that  
14 abuse or neglect of the child will occur shall, except as provided under ~~sub.~~ subs. (2m)  
15 and (2r), report as provided in sub. (3): ✓

**History:** Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 1370 to 1373, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 76, 78, 79, 94, 185.

16 **SECTION 7.** 48.981 (2) (b) of the statutes is amended to read:

17 48.981 (2) (b) A court-appointed special advocate who has reasonable cause to  
18 suspect that a child seen in the course of activities under s. 48.236 (3) has been  
19 abused or neglected or who has reason to believe that a child seen in the course of  
20 those activities has been threatened with abuse and neglect and that abuse or neglect  
21 of the child will occur shall, except as provided in ~~sub.~~ subs. (2m) and (2r), report as  
22 provided in sub. (3). ✓

**History:** Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 1370 to 1373, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 76, 78, 79, 94, 185.



1           **SECTION 8.** 48.981 (2) (bm) 1. (intro.)<sup>X</sup> of the statutes is amended to read:

2           48.981 (2) (bm) 1. (intro.) Except as provided in subd. 3. and sub<sup>✓</sup>. subs. (2m) and  
3           (2r), a member of the clergy shall report as provided in sub. (3) if the member of the  
4           clergy has reasonable cause to suspect that a child seen by the member of the clergy  
5           in the course of his or her professional duties:

**History:** Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 1370 to 1373, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 76, 78, 79, 94, 185.

6           **SECTION 9.** 48.981 (2) (bm) 2. (intro.) of the statutes is amended to read:

7           48.981 (2) (bm) 2. (intro.) Except as provided in subd. 3. and sub<sup>✓</sup>. subs. (2m) and  
8           (2r), a member of the clergy shall report as provided in sub. (3) if the member of the  
9           clergy has reasonable cause, based on observations made or information that he or  
10          she receives, to suspect that a member of the clergy has done any of the following:

**History:** Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 1370 to 1373, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 76, 78, 79, 94, 185.

11          **SECTION 10.** 48.981 (2m) (title) of the statutes is amended to read:

12          48.981 (2m) (title) EXCEPTION TO REPORTING REQUIREMENT; HEALTH CARE SERVICES.

**History:** Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 1370 to 1373, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 76, 78, 79, 94, 185.

13          **SECTION 11.** 48.981 (2r) of the statutes is created to read:

14          48.981 (2r) EXCEPTION TO REPORTING REQUIREMENT; <sup>✓</sup>PERSON DELEGATED PARENTAL  
15          POWERS. A person delegated care and custody of a child under s. 48.979<sup>✓</sup> is not required  
16          to report as provided in sub. (3)<sup>✓</sup> any suspected or threatened abuse or neglect of the  
17          child as required under sub. (2) (a), (b), or (bm)<sup>✓</sup> or (2m) (d) or (e)<sup>✓</sup>. Such a person who  
18          has reason to suspect that the child has been abused or neglected or who has reason  
19          to believe that the child has been threatened with abuse or neglect and that abuse  
20          or neglect of the child will occur may report as provided in sub. (3)<sup>✓</sup>.

21

(END)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

3/30

Rep Rouyenga

Require back ground check of agent

if facilitated by an organization

that facilitates these delegations



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBs0088/E  
GMM:jld.md

2  
RMD

IN 3131  
Today Fri 4/11

ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2011 ASSEMBLY BILL 30

✓

Reger

Reger

1 AN ACT *to amend* 48.60 (2) (a), 48.62 (2), 48.625 (3), 48.63 (2), 48.981 (2) (a)  
2 (intro.), 48.981 (2) (b), 48.981 (2) (bm) 1. (intro.), 48.981 (2) (bm) 2. (intro.) and  
3 48.981 (2m) (title); and *to create* 48.979 and 48.981 (2r) of the statutes;  
4 **relating to:** delegation by a parent who has legal custody of a child of powers  
5 regarding the care and custody of the child by a power of attorney.

***Analysis by the Legislative Reference Bureau***

Under current law, a parent may petition the court assigned to exercise jurisdiction under the Children's Code (juvenile court) for the appointment of a guardian for the parent's child. A guardian has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare. A guardian's authority includes the authority to consent to major medical, psychiatric, and surgical treatment for the child and the child obtaining a motor vehicle operator's license. A guardian also has the rights and responsibilities of legal custody, which include the right and duty to protect, train, and discipline the child and to provide food, shelter, legal services, education, and ordinary medical and dental care for the child.

This substitute amendment permits a parent who has legal custody of a child, by a properly executed power of attorney, to delegate to another person, for a period

not to exceed one year, any of his or her powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion on or for the child, the termination of parental rights to the child, or the enlistment of the child in the U.S. armed forces. The substitute amendment provides that such a delegation of powers does not deprive the parent of any of his or her powers regarding the care and custody of the child and does not prevent or supersede: 1) an investigation of suspected or threatened abuse or neglect of the child under the child abuse and neglect reporting law; 2) the child from being taken into and held in custody under the Children's Code or the Juvenile Justice Code; 3) a juvenile court intake worker from conducting an intake inquiry to determine whether the available facts establish juvenile court jurisdiction over the child; or 4) the juvenile court from exercising its child or juvenile in need of protection or services jurisdiction over the child.

Insert  
A ✓

Under current law, a person who provides care and maintenance for four or fewer children must obtain a license to operate a foster home. Current law, however, permits a relative or guardian of a child to provide care and maintenance for a child without obtaining a license to operate a foster home. This substitute amendment exempts a person who is delegated care and custody of a child as provided in the substitute amendment from the requirement that the person obtain a license to operate a foster home in order to provide care and maintenance for the child. The substitute amendment, however, prohibits a parent from placing a child in a foster home, group home, or inpatient treatment facility by means of a delegation of powers as provided in the substitute amendment. Under the substitute amendment, those placements may be made only by means of a juvenile court order or a voluntary agreement or admission as provided under current law.

Under current law, certain persons who have reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or who have reason to believe that such a child has been threatened with abuse or neglect and that abuse or neglect will occur must report that suspected or threatened abuse or neglect to the county department of human services or social services, the sheriff, or the local police department. Any other person may report suspected or threatened abuse or neglect of a child. This ~~amendment~~ exempts a person who is delegated care and custody of a child as provided in the substitute amendment from the requirement that he or she report any suspected or threatened abuse or neglect of the child. Instead, the substitute amendment permits such a person to report any suspected or threatened abuse or neglect of the child.

Substitute  
amendment ✓

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

- 1           **SECTION 1.** 48.60 (2) (a) of the statutes is amended to read:
- 2           48.60 (2) (a) A relative or, guardian, or person delegated care and custody of
- 3           a child under s. 48.979 who provides care and maintenance for such children.

1           **SECTION 2.** 48.62 (2) of the statutes is amended to read:

2           48.62 (2) A relative ~~or~~, a guardian of a child, or a person delegated care and  
3 custody of a child under s. 48.979 who provides care and maintenance for the child  
4 is not required to obtain the license specified in this section. The department, county  
5 department, or licensed child welfare agency as provided in s. 48.75 may issue a  
6 license to operate a foster home to a relative who has no duty of support under s. 49.90  
7 (1) (a) and who requests a license to operate a foster home for a specific child who is  
8 either placed by court order or who is the subject of a voluntary placement agreement  
9 under s. 48.63. The department, a county department, or a licensed child welfare  
10 agency may, at the request of a guardian appointed under s. 48.977 or 48.978, ch. 54,  
11 or ch. 880, 2003 stats., license the guardian's home as a foster home for the guardian's  
12 minor ward who is living in the home and who is placed in the home by court order.  
13 Relatives with no duty of support and guardians appointed under s. 48.977 or 48.978,  
14 ch. 54, or ch. 880, 2003 stats., who are licensed to operate foster homes are subject  
15 to the department's licensing rules.

16           **SECTION 3.** 48.625 (3) of the statutes is amended to read:

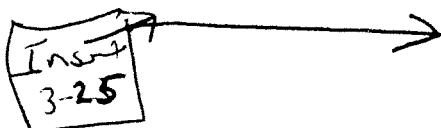
17           48.625 (3) This section does not apply to a foster home licensed under s. 48.62  
18 (1) or to a relative or guardian of a child or a person delegated care and custody of  
19 a child under s. 48.979 who provides care and maintenance for the child.

20           **SECTION 4.** 48.63 (2) of the statutes is amended to read:

21           48.63 (2) No person may place a child or offer or hold himself or herself out as  
22 able to place a child, except as provided in this section. Enrollment of a child by a  
23 parent or guardian in an educational institution ~~shall~~ and delegation of care and  
24 custody of a child to an agent under s. 48.979 do not constitute a placement for the  
25 purposes of this section.

✓

Insert  
3-25



1 SECTION 5. 48.979 of the statutes is created to read:

2 48.979 Delegation of power by parent. (1) (a) A parent who has legal  
3 custody of a child, by a properly executed power of attorney, may delegate to an agent,  
4 for a period not to exceed one year, any of his or her powers regarding the care and  
5 custody of the child, except the power to consent to the marriage or adoption of the  
6 child, the performance or inducement of an abortion on or for the child, the  
7 termination of parental rights to the child, or the enlistment of the child in the U.S.

8 ✓  
Insert  
4-99

8 armed forces. A delegation of powers under this paragraph does not deprive the  
parent of any of his or her powers regarding the care and custody of the child.

9 (c) (b) A parent who has legal custody of a child may not place the child in a foster  
10 home, group home, or inpatient treatment facility by means of a delegation of powers  
11 under par. (a). Those placements may be made only by means of a court order or as  
12 provided in s. 48.63 or 51.13.

13 (d) (c) A delegation of powers under par. (a) does not prevent or supersede any of  
14 the following:

- 15 1. An agency, a sheriff, or a police department from receiving and investigating
- 16 a report of suspected or threatened abuse or neglect of the child under s. 48.981.
- 17 2. The child from being taken into and held in custody under ss. 48.19 to 48.21
- 18 or 938.19 to 938.21.
- 19 3. An intake worker from conducting an intake inquiry under s. 48.24 or 938.24.
- 20 4. A court from exercising jurisdiction over the child under s. 48.13 or 938.13.

21 (e) (d) A parent who has delegated his or her powers regarding the care and  
22 custody of a child under par. (a) may revoke that delegation at any time by executing  
23 a written revocation and notifying the agent in writing of the revocation. A written  
24

1 revocation invalidates the delegation of powers except with respect to acts already  
2 taken in reliance on the delegation of powers.

3 (2) A power of attorney complies with sub. (1) (a) <sup>✓</sup> if the power of attorney  
4 substantially conforms to the following form:

5 **POWER OF ATTORNEY**

6 **DELEGATING PARENTAL POWER**

7 *AUTHORIZED BY S. 48.979, WIS. STATS.*

8 NAME(S) OF CHILD(REN)

9 This power of attorney is for the purpose of providing for the care and custody  
10 of:

11 Name, address, and date of birth of child ....

12 Name, address, and date of birth of child ....

13 Name, address, and date of birth of child ....

14 **DELEGATION OF POWER TO AGENT**

15 I, .... (name and address of parent), state that I have legal custody of the  
16 child(ren) named above. (*Only a parent who has legal custody may use this form.*)

17 I delegate my parental power to:

18 Name of agent ....

19 Agent's address ....

20 Agent's telephone number(s) ....

21 Agent's e-mail address ....

22 Relationship of agent to child(ren) ....

23 The parental power I am delegating is as follows:

24 **FULL**

1 (Check if you want to delegate full parental power regarding the care and  
2 custody of the child(ren) names above.)

3 .... Full parental power regarding the care and custody of the child(ren) named  
4 above

5 PARTIAL

6 (Check each subject over which you want to delegate your parental power  
7 regarding the child(ren) names above.)

8 .... The power to consent to all health care; or

9 .... The power to consent to only the following health care:

10 .... Ordinary or routine health care, excluding major surgical procedures,  
11 extraordinary procedures, and experimental treatment

12 .... Emergency blood transfusion

13 .... Dental care

14 .... Disclosure of health information about the child(ren)

15 .... The power to consent to educational and vocational services

16 .... The power to consent to the employment of the child(ren)

17 .... The power to consent to the disclosure of confidential information, other  
18 than health information, about the child(ren)

19 .... The power to provide for the care and custody of the child(ren)

20 .... The power to consent to the child(ren) obtaining a motor vehicle operator's  
21 license

22 .... The power to travel with the child(ren) outside the state of Wisconsin

23 .... The power to obtain substitute care, such as child care, for the child(ren)

24 .... Other specifically delegated powers or limits on delegated powers .... (Fill in  
25 the following space or attach a separate sheet describing any other specific powers that



1 *you wish to delegate or any limits that you wish to place on the powers you are*  
2 *delegating.)*

3 This delegation of parental powers does not deprive a custodial or noncustodial  
4 parent of any of his or her powers regarding the care and custody of the child,  
5 whether granted by court order or force of law.

6 THIS DOCUMENT MAY NOT BE USED TO DELEGATE THE POWER TO  
7 CONSENT TO THE MARRIAGE OR ADOPTION OF THE CHILD(REN), THE  
8 PERFORMANCE OR INDUCEMENT OF AN ABORTION ON OR FOR THE  
9 CHILD(REN), THE TERMINATION OF PARENTAL RIGHTS TO THE  
10 CHILD(REN), THE ENLISTMENT OF THE CHILD(REN) IN THE U.S. ARMED  
11 FORCES OR TO PLACE THE CHILD(REN) IN A FOSTER HOME, GROUP HOME,  
12 OR INPATIENT TREATMENT FACILITY.

#### 13 EFFECTIVE DATE AND TERM OF THIS DELEGATION

14 This Power of Attorney takes effect on .... and will remain in effect until .... If  
15 no termination date is given or if the termination date given is more than one year  
16 after the effective date of this Power of Attorney, this Power of Attorney will remain  
17 in effect for a period of one year after the effective date. This Power of Attorney may  
18 be revoked in writing at any time by a parent who has legal custody of the child(ren)  
19 and such a revocation invalidates the delegation of parental powers made by this  
20 Power of Attorney, except with respect to acts already taken in reliance on this Power  
21 of Attorney.

#### 22 SIGNATURE(S) OF PARENT(S)

23 Signature of parent ....

Date ....

24 Parent's name printed ....

25 Parent's address ....

1 Parent's telephone number ....

2 Parent's e-mail address ....

3 Signature of parent .... Date ....

4 Parent's name printed ....

5 Parent's address ....

6 Parent's telephone number ....

7 Parent's e-mail address ....

8 WITNESSING OF SIGNATURE(S) (OPTIONAL)

9 State of ....

10 County of ....

11 This document was signed before me on .... (date) by .... (name(s) of parent(s)).

12 Signature of notary ....

13 My commission expires: ....

14 STATEMENT OF AGENT

15 I, .... (name and address of agent), understand that .... (name(s) of parent(s)) has  
16 (have) delegated to me the powers specified in this Power of Attorney regarding the  
17 care and custody of .... (name(s) of child(ren)). I further understand that this Power  
18 of Attorney may be revoked in writing at any time by a parent who has legal custody  
19 of .... (name(s) of child(ren)). I hereby declare that I have read this Power of Attorney,  
20 understand the powers delegated to me by this Power of Attorney, am fit, willing, and  
21 able to undertake those powers, and accept those powers.

22 Agent's signature .... Date ....

23 APPENDIX

24 *(Here the parent(s) may indicate where they may be located during the term of*  
25 *the Power of Attorney if different from the address(es) set forth above.)*

1           .... I can be located at:

2           Address(es) ....

3           Telephone number(s) ....

4           E-mail address(es) ....

5           .... Or, by contacting:

6           Name ....

7           Address ....

8           Telephone number ....

9           E-mail address ....

10          .... Or, I cannot be located

11          **SECTION 6.** 48.981 (2) (a) (intro.) of the statutes is amended to read:

12           48.981 (2) (a) (intro.) Any of the following persons who has reasonable cause  
13           to suspect that a child seen by the person in the course of professional duties has been  
14           abused or neglected or who has reason to believe that a child seen by the person in  
15           the course of professional duties has been threatened with abuse or neglect and that  
16           abuse or neglect of the child will occur shall, except as provided under ~~sub.~~ subs. (2m)  
17           and (2r), report as provided in sub. (3):

18          **SECTION 7.** 48.981 (2) (b) of the statutes is amended to read:

19           48.981 (2) (b) A court-appointed special advocate who has reasonable cause to  
20           suspect that a child seen in the course of activities under s. 48.236 (3) has been  
21           abused or neglected or who has reason to believe that a child seen in the course of  
22           those activities has been threatened with abuse and neglect and that abuse or neglect  
23           of the child will occur shall, except as provided in ~~sub.~~ subs. (2m) and (2r), report as  
24           provided in sub. (3).

25          **SECTION 8.** 48.981 (2) (bm) 1. (intro.) of the statutes is amended to read:



2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

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(INSERT 3-25)

1           **SECTION 1.** 48.685 (1) (ag) 1. am. of the statutes is created to read:

2           48.685 (1) (ag) 1. am. A person to whom delegation of the care and custody of  
3 a child under s. 48.979 has been, or is expected to be, facilitated by an entity.

4           **SECTION 2.** 48.685 (1) (am) of the statutes is amended to read:

5           48.685 (1) (am) "Client" means a child who receives direct care or treatment  
6 services from an entity or from a caregiver specified in par. (ag) 1. 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, 76, 94, 185; s. 13.92 (2) (i).

7           **SECTION 3.** 48.685 (1) (ar) of the statutes is amended to read:

8           48.685 (1) (ar) "Contractor" means, with respect to an entity, a person, or that  
9 person's agent, who provides services to the entity under an express or implied  
10 contract or subcontract, including a person who has staff privileges at the entity and  
11 a person to whom delegation of the care and custody of a child under s. 48.979 has  
12 been facilitated by the entity.

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, 76, 94, 185; s. 13.92 (2) (i).

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

14           48.685 (1) (b) "Entity" means a child welfare agency that is licensed under s.  
15 48.60 to provide care and maintenance for children, to place children for adoption,  
16 or to license foster homes; a foster home that is licensed under s. 48.62; a group home  
17 that is licensed under s. 48.625; a shelter care facility that is licensed under s. 938.22;  
18 a child care center that is licensed under s. 48.65 or established or contracted for  
19 under s. 120.13 (14); a child care provider that is certified under s. 48.651; an  
20 organization that facilitates delegations of the care and custody of children under s.



1 48.979 or a temporary employment agency that provides caregivers to another  
2 entity.

**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, 76, 94, 185; s. 13.92 (2) (i).

3 **SECTION 5.** 48.685 (1) (bm) of the statutes is amended to read:

4 48.685 (1) (bm) "Nonclient resident" means a person who resides, or is expected  
5 to reside, at an entity or with a caregiver specified in par. (ag) 1. am., who is not a  
6 client of the entity or caregiver, and who has, or is expected to have, regular, direct  
7 contact with clients of the entity or caregiver.

**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, 76, 94, 185; s. 13.92 (2) (i).

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

**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, 76, 94, 185; s. 13.92 (2) (i).

22 **SECTION 7.** 48.685 (2) (b) 1. (intro.) of the statutes is amended to read:



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1 48.685 (2) (b) 1. (intro.) Every entity shall obtain all of the following with  
2 respect to a caregiver specified in sub. (1) (ag) 1. a. or am<sup>✓</sup> of the entity and with  
3 respect to a nonclient resident of a caregiver specified in sub. (1) (ag) 1. am<sup>✓</sup> of the  
4 entity:

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, 76, 94, 185; s. 13.92 (2) (i).

5 **SECTION 8.** 48.685 (2) (b) 1. e. <sup>✓</sup> of the statutes is amended to read:

6 48.685 (2) (b) 1. e. Information maintained by the department of health  
7 services under this section and under ss. 48.651 (2m), 48.75 (1m), 48.979 (1) (b), and  
8 120.13 (14) regarding any denial to the person of a license, continuation or renewal  
9 of a license, certification, or a contract to operate an entity for a reason specified in  
10 sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a  
11 contract with, or permission to reside at an entity or of permission to reside with a  
12 caregiver specified in sub. (1) (ag) 1. am<sup>✓</sup> for a reason specified in sub. (4m) (b) 1. to  
13 5. If the information obtained under this subd. 1. e. indicates that the person has  
14 been denied a license, continuation or renewal of a license, certification, a contract,  
15 employment, or permission to reside as described in this subd. 1. e., the entity need  
16 not obtain the information specified in subd. 1. a. to d.

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, 76, 94, 185; s. 13.92 (2) (i).

17 **SECTION 9.** 48.685 (2) (bd) <sup>✓</sup> of the statutes is amended to read:

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



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

**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, 76, 94, 185; s. 13.92 (2) (i).

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

13 48.685 (3) (b) Subject to par. (bm), every 4 years or at any time within that  
 14 period that an entity considers appropriate, the entity shall request the information  
 15 specified in sub. (2) (b) 1. a. to e. for all persons who are caregivers specified in sub.  
 16 (1) (ag) 1. a. or am. of the entity and for all nonclient residents of a caregiver specified  
 17 in sub. (1) (ag) 1. am. of the entity. ~~child-child~~

**NOTE:** NOTE: Par (b) is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i). The language in brackets was inserted by 2009 Wis. Act 75 but rendered surplusage by the treatment by 2009 Wis. Act 76. Corrective legislation is pending.

**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, 76, 94, 185; s. 13.92 (2) (i).

18 **SECTION 11.** 48.685 (4m) (b) (intro.) of the statutes is amended to read:

19 48.685 (4m) (b) (intro.) Notwithstanding s. 111.335, and except as provided in  
 20 sub. (5), an entity may not employ or contract with a caregiver specified in sub. (1)  
 21 (ag) 1. a. or am. or permit a nonclient resident to reside at the entity or with a





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1 caregiver specified in sub. (1) (ag) 1. am. of the entity if the entity knows or should  
2 have known any of the following:

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, 76, 94, 185; s. 13.92 (2) (i).

3 **SECTION 12.** 48.685 (4m) (c) of the statutes is amended to read:

4 48.685 (4m) (c) If the background information form completed by a person  
5 under sub. (6) (am) indicates that the person is not ineligible to be employed or  
6 contracted with for a reason specified in par. (b) 1. to 5., an entity may employ or  
7 contract with the person for not more than 60 days pending the receipt of the  
8 information sought under sub. (2) (am) ~~1. to 5.~~ or (b) 1. If the background information  
9 form completed by a person under sub. (6) (am) indicates that the person is not  
10 ineligible to be permitted to reside at an entity or with a caregiver specified in sub.  
11 (1) (ag) 1. am. for a reason specified in par. (b) 1. to 5. and if an entity otherwise has  
12 no reason to believe that the person is ineligible to be permitted to reside at an entity  
13 or with that caregiver for any of those reasons, the entity may permit the person to  
14 reside at the entity or with the caregiver for not more than 60 days pending receipt  
15 of the information sought under sub. (2) (am) or (b) 1. An entity shall provide  
16 supervision for a person who is employed, contracted with, or permitted to reside as  
17 permitted under this paragraph.

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, 76, 94, 185; s. 13.92 (2) (i).

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

19 48.685 (5) (a) Subject to pars. (bm) and (br), the department may license to  
20 operate an entity, the department in a county having a population of 500,000 or more,  
21 a county department, or an agency contracted with under s. 48.651 (2) may certify  
22 under s. 48.651, a county department or a child welfare agency may license under  
23 s. 48.62, and a school board may contract with under s. 120.13 (14) a person who



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1 otherwise may not be licensed, certified, or contracted with for a reason specified in  
 2 sub. (4m) (a) 1. to 5., and an entity may employ, contract with, or permit to reside at  
 3 the entity or permit to reside with a caregiver specified in sub. (1) (ag) 1. am. ✓ of the  
 4 entity a person who otherwise may not be employed, contracted with, or permitted  
 5 to reside at the entity or with that caregiver ✓ for a reason specified in sub. (4m) (b) 1.  
 6 to 5., if the person demonstrates to the department, the county department, the  
 7 contracted agency, the child welfare agency, or the school board or, in the case of an  
 8 entity that is located within the boundaries of a reservation, to the person or body  
 9 designated by the Indian tribe under sub. (5d) (a) 3., by clear and convincing evidence  
 10 and in accordance with procedures established by the department by rule or by the  
 11 tribe that he or she has been rehabilitated.

~~NOTE: NOTE: Par. (a) is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i). NOTE:~~

**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, 76, 94, 185; s. 13.92 (2) (i).

12 **SECTION 14.** 48.685 (5m) of the statutes is amended to read:

13 48.685 (5m) Notwithstanding s. 111.335, the department may refuse to license  
 14 a person to operate an entity, a county department or a child welfare agency may  
 15 refuse to license a foster home under s. 48.62, and an entity may refuse to employ or  
 16 contract with a caregiver or permit a nonclient resident to reside at the entity or with  
 17 a caregiver specified in sub. (1) (ag) 1. am. ✓ of the entity if the person has been  
 18 convicted of an offense that is not a serious crime, but that is, in the estimation of the  
 19 department, county department, child welfare agency, or entity, substantially  
 20 related to the care of a client. Notwithstanding s. 111.335, the department may  
 21 refuse to license a person to operate a child care center, the department in a county  
 22 having a population of 500,000 or more, a county department, or an agency  
 23 contracted with under s. 48.651 (2) may refuse to certify a child care provider under



1 s. 48.651, a school board may refuse to contract with a person under s. 120.13 (14),  
 2 and a child care center that is licensed under s. 48.65 or established or contracted for  
 3 under s. 120.13 (14) or a child care provider that is certified under s. 48.651 may  
 4 refuse to employ or contract with a caregiver or permit a nonclient resident to reside  
 5 at the child care center or child care provider if the person has been convicted of or  
 6 adjudicated delinquent on or after his or her 12th birthday for an offense that is not  
 7 a serious crime, but that is, in the estimation of the department, county department,  
 8 contracted agency, school board, child care center, or child care provider,  
 9 substantially related to the care of a client.

**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, 76, 94, 185; s. 13.92 (2) (i).

10 **SECTION 15.** 48.685 (6) (am) of the statutes is amended to read:

11 48.685 (6) (am) Except as provided in this paragraph, every 4 years an entity  
 12 shall require all of its caregivers and all nonclient residents of the entity or of a  
 13 caregiver specified in sub. (1) (ag) 1. am. of the entity to complete a background  
 14 information form that is provided to the entity by the department. Every year a day  
 15 child care center that is licensed under s. 48.65 or established or contracted for  
 16 under s. 120.13 (14) or a day child care provider that is certified under s. 48.651  
 17 shall require all of its caregivers and nonclient residents to complete a background  
 18 information form that is provided to the day child care center or day child care  
 19 provider by the department.

NOTE: NOTE: The correct term is shown in brackets. 2009 Wis. Act 76 added the references to "day care" and 2009 Wis. Act 185 changed other references from "day care" to "child care" without taking Act 76 into account. Corrective legislation is pending. NOTE:

**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, 76, 94, 185; s. 13.92 (2) (i).

(END OF INSERT)

(INSERT 4-9)



1 (b) If a delegation of powers to an agent under par. (a) is facilitated by an entity,  
 2 as defined in s. 48.685 (1) (b), that entity shall obtain the information specified in s.  
 3 48.685 (2) (b) 1. with respect to the proposed agent and any nonclient resident, as  
 4 defined in s. 48.685 (1) (bm), of the proposed agent. Subject to s. 48.685 (5), if that  
 5 information indicates that the proposed agent may not be a contractor, as defined in  
 6 s. 48.685 (1) (ar), of the entity or that a nonclient resident of the proposed agent may  
 7 not be permitted to reside with the proposed agent for a reason specified in s. 48.685  
 8 (4m) (b) 1. to 5., the entity may not facilitate a delegation of powers to the proposed  
 9 agent under par. (a). The entity shall provide the department of health services with  
 10 information about each person who is denied a delegation of powers or permission  
 11 to reside under this paragraph for a reason specified in s. 48.685 (4m) (b) 1. to 5.

(END OF INSERT)

(INSERT A)

④ Under current law, certain entities that provide care for children, such as foster homes and group homes, may not employ or contract with a caregiver or permit a nonclient resident to reside at the entity if the caregiver or nonclient resident has been convicted or adjudicated delinquent for committing a serious crime, as defined under current law, or has abused or neglected a child or person receiving care from the person (client), unless the person shows that he or she has been rehabilitated. This substitute amendment requires an organization that facilitates delegations of the care and custody of children to agents as provided in the substitute amendment to conduct a criminal history and child and client abuse record search with respect to a proposed agent and any nonclient resident of a proposed agent. If that search indicates that the proposed agent or any nonclient resident of the proposed agent has been so convicted or adjudicated or has abused a child or client, the organization may not facilitate a delegation of the care and custody of a child to the proposed agent.

(END OF INSERT)

417

Bill Neville

Redraft 400088/2

1. Require all parents who have legal custody  
to sign POA

2. Clarify that parent under CHIPS order may  
still execute POA - if it does not conflict w/ order