

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1949/P1ins
FFK:.....

LPS -
Inserts
out of order

ANALYSIS INSERT

Under current law, various offenses related to Medical Assistance, Wisconsin Works (W-2), the federal Supplemental Nutrition Assistance Program, formerly known as the food stamp program and currently known in Wisconsin as FoodShare, and other public assistance programs administered by Department of Children and Families (DCF) and the Department of Health Services (DHS) (public assistance programs) are subject to criminal penalties. For example, a person who makes or causes to be made any false statement or representation of a material fact in an application for a benefit or payment, or for use in determining rights to any benefit or payment, under the Medical Assistance program is subject to a Class H felony. Similarly, a person who knowingly and willfully makes or causes to be made any false statement or representation of a material fact in an application for W-2 benefits or payments may be fined not more than \$10,000, imprisoned for not more than nine months, or both. This bill moves offenses related to public assistance programs to the chapter of the statutes that relates to crimes against government and its administration. Specifically, under the bill, that chapter of the statutes contains provisions related to W-2 fraud, Medical Assistance fraud, FoodShare fraud and general public assistance fraud.

Under current law, the department of justice or a district attorney is authorized to prosecute violations of criminal laws affecting the Medical Assistance program. Under the bill, the department of justice or a district attorney is authorized to prosecute violations of criminal laws affecting any public assistance program, including W-2, FoodShare, and Medical Assistance.

Under current law, any person who makes any statement in a written application for public assistance is considered to have made an admission as to the existence, correctness, or validity of any fact stated, which may be used in an enforcement action. Under the bill, an employee who accepts an application for public assistance is authorized to administer an oath to the applicant that the information given is true and correct to the best of the applicant's knowledge. The bill also requires DCF and DHS to promulgate rules under which information provided by an applicant for public assistance must be sworn to or otherwise affirmed as being true and correct to the best of the applicant's knowledge.

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

INS 3-22

- 1 SECTION 1. 49.141 (7) (title) of the statutes is repealed and recreated to read:
- 2 49.141 (7) (title) SUSPENSIONS.

END INS 3-22

INS 4-9

MA

Wisconsin

the

nine

MA
DOJ

MA

1 1. Violating sub. (6) (a) or s. 946.90 (2) (a) with respect to his or her identity or
2 place of residence for the purpose of receiving simultaneously from this state and at
3 least one other state assistance funded by a block grant under Title I of the Federal
4 Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

History: 1995 a. 289; 1997 a. 27, 41, 283; 1999 a. 9; 2001 a. 105, 109; 2003 a. 173; 2005 a. 443 s. 265; 2009 a. 28.

(end of INS 4-9)

INS. 17-18

5 SECTION 2. 49.49 (5) of the statutes is amended to read:

6 49.49 (5) COUNTY COLLECTION. Any county may retain ~~15%~~ 15 percent of state
7 medical assistance funds that are recovered due to the efforts of a county employee
8 or officer or, if the county initiates action by the department of justice, due to the
9 efforts of the department of justice under s. ~~49.495~~ 49.846. This subsection applies
10 only to recovery of medical assistance that was provided as a result of fraudulent
11 activity by a recipient or by a provider.

****NOTE: Section 49.49 (5) allows a county to retain 15 percent of state medical
assistance funds that are recovered due to the efforts of a county employee or officer or,
if the county initiates action by the department of justice, due to the efforts of the
department of justice under this subsection. There are similar provisions that allow
counties and tribes to retain a percentage of public assistance funds that are recovered
due to the efforts of an employee of the county or tribe. See ss. 49.195 (4) (a), 49.497 (2) (a),
49.793 (2) (a), and 49.847 (3) (a). Please let me know if you would like to add language
similar to what is in 49.49 (5), which allows a county to retain funds if the county initiates
action by the department of justice, to the collection provisions that apply to other public
assistance programs.

*

(S)

History: 1977 c. 418; 1979 c. 89; 1981 c. 317; 1985 a. 29 s. 3202 (23); 1985 a. 269; 1989 a. 23, 31; 1995 a. 27; 1997 a. 283; 2001 a. 109; 2003 a. 309; 2007 a. 20; 2009 a. 283.

END INS. 17-18

INS 18-4

12 SECTION 3. 49.495 (title) of the statutes is renumbered 49.846 (title).

13 SECTION 4. 49.495 of the statutes is renumbered 49.846 (2) and amended to
14 read:



1 49.846 (2) The department of justice or the district attorney may institute,
 2 manage, control, and direct, in the proper county, any prosecution for violation of
 3 criminal laws affecting ~~the medical~~ a public assistance program, including ~~but not~~
 4 ~~limited to~~ laws in this chapter, chs. 939 to 951 relating to medical assistance
 5 ~~contained in this subchapter~~ Medical Assistance, Wisconsin Works, the food stamp
 6 program, and emergency assistance under s. 49.138, and laws affecting the health,
 7 safety, and welfare of public assistance program recipients ~~of medical assistance~~. For
 8 this purpose the department of justice shall have and exercise all powers conferred
 9 upon district attorneys in such cases. ~~The~~ If a prosecution under this section involves
 10 a person holding a license granted by the medical examining board or an interested
 11 affiliated credentialing board, the department of justice or district attorney shall
 12 notify the medical examining board or the interested affiliated credentialing board
 13 of any ~~such~~ the prosecution of a person holding a license granted by the board or
 14 ~~affiliated credentialing board.~~

History: 1977 c. 418; 1985 a. 340; 1993 a. 107; 1995 a. 27.

END INS 18-4

INS 18-9

15 (c) [✓]“Food stamp program” means the federal food stamp program under 7 USC
 16 2011 to ~~2029~~ 2036a.

History: 2001 a. 16 s. 1656tz; Stats. 2001 s. 49.795; 2001 a. 109; 2011 a. 32.

END INS 18-9

INS 22-3

17 **SECTION 5.** 49.795 (8) (d) [✓]1. of the statutes is renumbered [✓]946.92 (3) (b) and
 18 amended to read:



1 946.92 (3) (b) In addition to the penalties applicable under par. (a), (b) or (c),
2 the court shall suspend a person who violates this section sub. (2) from participation
3 in the food stamp program as follows:

4 1. For a first offense conviction under this section, not less than one year. The
5 court may extend the suspension by and not more than 18 months ^{2 years and} ~~18 months~~ ^{6 months}.

6 2. For a 2nd offense conviction under this section, not less than 2 years. The
7 court may extend the suspension by and not more than 18 months ^{3 years} ~~18 months~~ ^{and} ~~6 months~~.

8 3. For a 3rd offense conviction under this section, permanently.

9 History: 2001 a. 16 s. 1656tz; Stats. 2001 s. 49.795; 2001 a. 109; 2011 a. 13

SECTION 6. 49.795 (8) (d) 1m. of the statutes is renumbered 946.92 (3) (c) and
10 amended to read:

11 946.92 (3) (c) In addition to the penalties applicable under par. (a), (b) or (c),
12 a court shall permanently suspend from the food stamp program a person who has
13 been convicted of an offense under 7 USC 2024 (b) or (c) involving an item covered
14 by 7 USC 2024 (b) or (c) having a value of \$500 or more.

History: 2001 a. 16 s. 1656tz; Stats. 2001 s. 49.795; 2001 a. 109; 2011 a. 32.

END INS 22-3

INS 22-14

15 946.92 (3) (d) ^{strike} ~~If a court finds that a person traded violated sub. (2) by trading~~
16 ~~a controlled substance, as defined in s. 961.01 (4), for food coupons stamp program~~
17 ~~benefits, the court shall suspend the person from participation in the food stamp~~
18 ~~program as follows:~~
19 ~~a.~~ Upon the first such finding a first conviction, for 2 years.

SECTION #. 49.795 (8) (e) and (f) of the statutes are
renumbered 946.92 (3) (d) and (e), and 946.92 (3) (d) 1.
(intro.), a. and b. and (e), as renumbered, are amended to
read:

1 **A** **b.** Upon the a 2nd such finding conviction, permanently. ei
 History: 2001 a. 16 s. 1656tz; Stats. 2001 s. 49:795; 2001 a. 109; 2011 a. 32.
 (end of INS 22-14)

INS 23-14B

2 **SECTION 7.** 49.846 (1) of the statutes is created to read:

3 49.846 (1) In this section, "public assistance program" means any program
 4 administered by the department of health services or the department of children and
 5 families under this chapter under which the department administering the program
 6 provides services, benefits, or other assistance to individuals or families.

END INS 23-14B

INS. 26-4

7 **SECTION 8.** 946.92 (3) (a) of the statutes is created to read:

8 946.92 (3) (a) Whoever violates sub. (2) is subject to the following penalties:

9 1. If the value of the food stamp program benefits does not exceed \$100, a Class
 10 B misdemeanor.

***NOTE: This is essentially the recreation of s. 49.795 (8) (a) 1. and (b) 1. However, because the penalty is now in the criminal code, it needs to be a classified penalty, i.e. a certain class of misdemeanor or felony. For purposes of this draft, I based the classification on the existing fine under s. 49.795 (8), which is up to \$1,000. Please note as a Class B misdemeanor, the amount of possible jail time is reduced from not more than one year, under current law, to no more than 90 days. If this is not consistent with your intent, please let me know what the penalty should be if the value of the benefits do not exceed \$100. Also, please note that there is not a separate provision for 2nd or subsequent offenses at this value level because the penalty is the same for first and subsequent offenses under current law.

LPS-CHECK
△ →

*

*

11 2. Except as provided in subd. 3., if the value of the food stamp program benefits
 12 exceeds \$100, but is less than \$5,000, a Class I felony.

13 3. If the value of the food stamp program benefits exceeds \$100, but is less than
 14 \$5,000, and the person has a prior conviction under this section, a Class H felony.



1 4. If the value of the food stamp program benefits is \$5,000[✓] or more, a[✓] Class G
2 felony.

END INS. 26-4

INS. 27-11

****NOTE: In LRB-1479, the penalty under this subdivision was a fine of not more than \$250, jail time of up to 6 months, or both. To conform to drafting conventions in the criminal code, I replaced this with the classified misdemeanor. A Class B misdemeanor is a fine of not more than \$1,000 and up to 90 days in jail, or both. If you prefer a different class of misdemeanor, please let me know.

END INS. 27-11

INS 29-7 A

3 ^{NO} ₄ The department of children and families[✓] shall present the statement of scope
4 of the rules required under section 49.835 (3)[✓] of the statutes, as created by this act,
5 to the governor for the approval under section 227.135 (2)[✓] of the statutes no later than
6 the 30th[✓] day after the effective date of this paragraph.[✓] (end ins 29-7A)

INSERT
29-7B
→

^{Wisconsin}
****NOTE: Because this draft is based on a Leg. Council study committee draft that was drafted prior to 2011 Act 21, which made significant changes to the rule making process, whether to require a scope statement by a certain date or whether to exempt these rules from the scope statement was not addressed in the base draft. Currently, this paragraph requires DCF to submit a statement of scope to the governor by a date certain and then to submit proposed rules to the Legislative Council within a certain time frame based on when the statement of scope is approved. Please let me know if you would prefer different time periods for either requirement or whether you prefer to exempt the rules from the statement of scope requirement. The same issue applies to the rules promulgated by DHS under s. 49.835 (3) ^{8A}

(END INS 29-7 B)

INS 29-10

7 ^{NO} ₄ The department of health services shall present the statement of scope of the
8 rules required under section 49.835 (3) of the statutes, as created by this act, to the



- 1 governor for the approval under section 227.135 (2) of the statutes no later than the
- 2 30th day after the effective date of this paragraph.

✓
✓ NO
H

END INS 29-10

POSITION AUTHORIZATION INSERT *ei*

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1949/P1ins2
FFK:.....

INS 11-4

1 SECTION 1. 49.32 (8)^X of the statutes is amended to read:

2 49.32 (8) PERIODIC EARNINGS CHECK BY DEPARTMENT. The department shall make
3 a periodic check of the amounts earned by recipients of aid to families with dependent
4 children under s. 49.19 and by participants under Wisconsin works under ss. 49.141
5 to 49.161 through a check of the amounts credited to the recipient's social security
6 number. The department shall make an investigation into any discrepancy between
7 the amounts credited to a social security number and amounts reported as income
8 on the declaration application and take appropriate action under s. 49.95[✓] 946.93
9 when warranted. The department shall use the state wage reporting system under
10 1985 Wisconsin Act 17, section 65 (1), when the system is implemented, to make
11 periodic earnings checks.

History: 1995 a. 27 ss. 2035 to 2037, 2276d, 2805 to 2809, 2927 to 2930, 3146 to 3149; 1995 a. 289, 361, 370, 404; 1997 a. 27, 35, 237, 252, 283; 2001 a. 16; 2003 a. 33; 2007 a. 20 ss. 1483 to 1491, 9121 (6) (a); 2009 a. 28.

END INS 11-4

INS 22-14

12 SECTION 2. 49.795 (8) (e) and (f)^X of the statutes are renumbered 946.92[✓] (3) (d)
13 and (e) and amended to read:[✓]

14 946.92 (3) (d) 1. If a court finds that a person traded violated sub. (2) by trading
15 a controlled substance, as defined in s. 961.01 (4), for food coupons stamp program
16 benefits, the court shall suspend the person from participation in the food stamp
17 program as follows:[✓]

18 a. Upon the first such finding a first conviction[✓], for 2 years.

19 b. Upon the a 2nd such finding conviction[✓], permanently.



1 2. If ~~a court finds that~~ a person violated sub. (2) [✓] by trading traded firearms,
 2 ammunition, or explosives for food ~~coupons~~ stamp program benefits,[✓] the court shall
 3 suspend the person permanently from participation in the food stamp program.

4 (e) Notwithstanding ~~par. (d)~~ pars. (b) and (c),[✓] in addition to the penalties
 5 applicable under par. (a), ~~(b) or (c)~~, the court shall suspend from the food stamp
 6 program for a period of 10 years a person who violates sub. (2) by fraudulently
 7 ~~misstates~~ misstating or ~~misrepresents~~ misrepresenting his or her identity or place
 8 of residence for the purpose of receiving multiple benefits simultaneously under the
 9 food stamp program.[✓]

History: 2001 a. 16 s. 1656tz; Stats. 2001 s. 49.795; 2001 a. 109; 2011 a. 32.
END INS 22-14

INS 23-3

10 **SECTION 3.** 49.797 [✓](2) (a) of the statutes is amended to read:

11 49.797 **(2)** (a) Notwithstanding s. 46.028 and except as provided in par. (b) and
 12 sub. (8), the department shall administer a statewide program to deliver food stamp
 13 benefits to recipients of food stamp benefits by an electronic benefit transfer system.
 14 All suppliers, as defined in s. ~~49.795~~ 946.92 [✓](1) (d), may participate in the delivery
 15 of food stamp benefits under the electronic benefit transfer system. The department
 16 shall explore methods by which nontraditional retailers, such as farmers' markets,
 17 may participate in the delivery of food stamp benefits under the electronic benefit
 18 transfer system.

History: 2001 a. 16 ss. 1656u to 1656ue, 1656uj to 1656ut; Stats. 2001 s. 49.797; 2009 a. 28; 2011 a. 32.
INS 23-3

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

1949/P1dn

FFK:.....

date

^
JKd

To Senator Darling:

This draft does not include the position authorizations for the Department of Children and Families or the provision you requested to expand DCF's business analytics capacity to "data mine." I am waiting on additional information from DCF to complete those aspects of the draft.

Fern Knepp
Legislative Attorney
Phone: (608) 261-6927
E-mail: fern.knepp@legis.wisconsin.gov

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

1949/P1dn
FFK:jld:ph

April 10, 2013

To Senator Darling:

This draft does not include the position authorizations for the Department of Children and Families or the provision you requested to expand DCF's business analytics capacity to "data mine." I am waiting on additional information from DCF to complete those aspects of the draft.

Fern Knepp
Legislative Attorney
Phone: (608) 261-6927
E-mail: fern.knepp@legis.wisconsin.gov

Knepp, Fern

From: Sappenfield, Anne
Sent: Monday, March 25, 2013 12:53 PM
To: Knepp, Fern
Subject: FW: Fraud positions info

Importance: High

Hi Fern,

Here is some info from DCF on the draft you are working on for Sen. Darling. I asked for information on "data mining" again and asked if Sen. Darling would like to just use DCF's existing authority for these positions or to spell out the duties.

Thanks!
Anne

From: Kitzman, Nick
Sent: Monday, March 25, 2013 12:38 PM
To: Sappenfield, Anne
Subject: FW: Fraud positions info
Importance: High

Anne,
I hope the below email will give enough information for Fern to complete the draft. Please let me know if you have any questions.

Thanks.

From: Buschman, Sara - DCF [<mailto:Sara.Buschman@wisconsin.gov>]
Sent: Monday, March 25, 2013 12:17 PM
To: Kitzman, Nick
Subject: Fraud positions info
Importance: High

Here is the info on those positions from our budget director. Let me know if you have any questions or need anything else. He is going to be on vacation the rest of the week but is here yet today.

Sara

Sara L. Buschman
Executive Assistant
Department of Children and Families

201 East Washington Avenue, Madison, WI 53703
Phone: 608.261.6588 • Fax: 608.261.6972
Email: sara.buschman@wisconsin.gov

- 1) Increase field audit investigators in the Fiscal Integrity and Audit section- add 4 staff to double the reviews of organizations under contract with DCF. This would address one of the Child Placement Agency issues that have come up.
- 2) Create a "risk management assessment" position within DCF. This person's job would be to do continual assessment of DCF system and processes to identify potential financial weaknesses that could be exploited by outside parties.
- 3) Expand DCF "quality assurance" functions for Child Care and W-2. Currently BRO draws limited samples of CC Certified Providers, Child Care Eligibility, Child Care Authorizations and W-2 cases to assess accuracy. An expanded QA sample would allow more accurately extrapolate finding to individual counties and local agencies and by doing so allow for more targeted technical assistance which in turn allow for more accurate processing of cases- fraud prevention. Estimate 5 staff.
- 4) Create an "asset collection" specialist within the Collections section of Finance. Assets would be defined as land, property, cars, etc. This would not reduce fraud but give new tools to collect once fraud was established. Capacity is currently very limited.
- 5) Expand DCF's business analytics capacity to "data mine" current information we collect which would allow us to connect the dots once we have uncovered fraud. Example- an individual found in W-2 to engage in fraudulent behavior we could then see how they might be connected to other individuals in our programs for possible other appropriate behavior.

Positions

Statutory authority

- \$ ← increase?
- Appropriation ← for each position type
- New or existing

All of the functions that the new positions will perform are within the Department's current authority. The positions under #2 would simply be a higher level auditor that would be tasked with assessing department policies and developing financial processes to improve DCF's auditing function. The position under #4 would be a higher level collections specialist, similar to what we have in the collections unit, that would focus on asset collection as a tool for collection of debts.

The cost of the 12 positions (9.0 GPR and 3.0 FED) is estimated at \$857,300 in FY14 and \$1,043,100 in SFY15. The GPR positions and funding would be in the following appropriations:

			<u>SFY 14</u>	<u>SFY15</u>
20.437(1)(a)	Appr. 101	9.0 FTE	\$643,000	\$782,300
20.437(1)(n)	Appr. 155	3.0 FTE	\$214,300	\$260,800

Kahler, Pam

From: Knepp, Fern
Sent: Thursday, April 11, 2013 2:36 PM
To: Kahler, Pam
Subject: FW: Info for Sen. Darling draft

Importance: High

FYI-

My out of office is now on.

From: Buschman, Sara - DCF [<mailto:Sara.Buschman@wisconsin.gov>]
Sent: Thu 4/11/2013 1:29 PM
To: Knepp, Fern
Cc: Kitzman, Nick
Subject: Info for Sen. Darling draft

Here is the information from our budget shop and division administrator - if it doesn't answer your questions let me know:

All of the functions that the new positions will perform are within the Department's current authority. The positions under #2 would simply be a higher level auditor that would be tasked with assessing department policies and developing financial processes to improve DCF's auditing function. The position under #4 would be a higher level collections specialist, similar to what we have in the collections unit, that would focus on asset collection as a tool for collection of debts.

The cost of the 12 positions (9.0 GPR and 3.0 FED) is estimated at \$857,300 in FY14 and \$1,043,100 in SFY15. The GPR and FED positions and funding would be in the following appropriations (**NOTE: I believe the original email from our budget shop indicated it was all GPR - they have since corrected that**)

SFY 14 SFY15

20.437(1)(a) Appr. 101 9.0 FTE \$643,000 | \$782,300 (GPR)

20.437(1)(n) Appr. 155 3.0 FTE \$214,300 | \$260,800 (FED) *revised*

On "data mining" - the response I received from our administrator was that we don't think we know today if we need new statutory language. The FTE is to start investing effort and time into this endeavor.

Sorry for the delay on this - it was info from several emails put together.

Sara

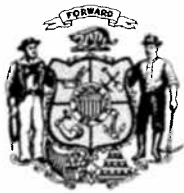
Sara L. Buschman
Executive Assistant
Department of Children and Families

201 East Washington Avenue, Madison, WI 53703
Phone: 608.261.6588 • Fax: 608.261.6972
Email: sara.buschman@wisconsin.gov

per Nick by phone 4-12

instead of DCF & DHS promulgating rules
~~to~~ requiring info to be sworn to or
affirmed, etc.

require rules that provide standards
& procedures for the
administration of an oath
(administering an oath is still
permissive)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1949/01
FFK:jld:ra

P2
+PK
r m c n u m

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

4-4-12
D-106

X Regen

1 AN ACT *to repeal* 49.141 (7) (b), 49.141 (9) (title), 49.141 (10) (title) and (b), 49.49

2 (1) (title) and (a) (intro.), 49.49 (1) (b), 49.49 (2) (title) and (2) (a) (title), 49.49

3 (2) (b) (title), 49.49 (2) (c) (title), 49.49 (3) (title), 49.49 (3m) (title), 49.49 (3m)

4 (b), 49.49 (4) (title), 49.795 (1) (cm), 49.795 (7), 49.795 (8) (a), (b) and (c) and

5 49.95; *to renumber* 49.495 (title) and 49.795 (title) and (1) (intro.); *to*

6 *renumber and amend* 49.141 (7) (a), 49.141 (9) (a) to (c), 49.141 (10) (a), 49.49

7 (1) (a) 1. to 4., 49.49 (1) (c), 49.49 (2) (a), 49.49 (2) (b), 49.49 (2) (c), 49.49 (3), 49.49

8 (3m) (a), 49.495, 49.795 (1) (a), (b), (c), (d) and (e), 49.795 (2) to (6), 49.795 (8)

9 (d) 1., 49.795 (8) (d) 1m., 49.795 (8) (d) 2. and 49.795 (8) (e) and (f); *to*

10 *consolidate, renumber and amend* 49.49 (4) (a) and (b); *to amend* 49.141

11 (7) (c) (intro.) and 1., 49.141 (8), 49.32 (8), 49.45 (2) (b) 7. (intro.) and a., and (11),

12 49.49 (3p) (title), 49.49 (5), 49.49 (7) (d), 49.688 (9) (a), 49.797 (2) (a), 59.54 (23)

13 and 940.11 (2); *to repeal and recreate* 49.141 (7) (title); and *to create* 49.835,

14 49.846 (1), 946.90 (title), 946.90 (1), 946.90 (2), 946.91 (title), (1) and (2) (intro.),

15 946.92 (3) (a) and 946.93 of the statutes; **relating to:** applications for public

1

assistance programs, offenses in public assistance programs, granting rule-making authority, and providing a penalty.

2

and making an appropriation

Analysis by the Legislative Reference Bureau

Under current law, various offenses related to the Medical Assistance program (MA), Wisconsin Works (W-2), the federal Supplemental Nutrition Assistance Program, formerly known as the food stamp program and currently known in Wisconsin as FoodShare, and other public assistance programs administered by the Department of Children and Families (DCF) and the Department of Health Services (DHS) (public assistance programs) are subject to criminal penalties. For example, a person who makes or causes to be made any false statement or representation of a material fact in an application for a benefit or payment, or for use in determining rights to any benefit or payment, under MA is subject to a Class H felony. Similarly, a person who knowingly and willfully makes or causes to be made any false statement or representation of a material fact in an application for W-2 benefits or payments may be fined not more than \$10,000, imprisoned for not more than nine months, or both. This bill moves offenses related to public assistance programs to the chapter of the Wisconsin Statutes that relates to crimes against government and its administration. Specifically, under the bill, that chapter of the Wisconsin Statutes contains provisions related to W-2 fraud, MA fraud, FoodShare fraud and general public assistance fraud. *Insert A* ✓

Under current law, the Department of Justice (DOJ) or a district attorney is authorized to prosecute violations of criminal laws affecting MA. Under the bill, DOJ or a district attorney is authorized to prosecute violations of criminal laws affecting any public assistance program, including W-2, FoodShare, and MA.

Under current law, any person who makes any statement in a written application for public assistance is considered to have made an admission as to the existence, correctness, or validity of any fact stated, which may be used in an enforcement action. Under the bill, an employee who accepts an application for public assistance is authorized to administer an oath to the applicant that the information given is true and correct to the best of the applicant's knowledge. The bill also requires DCF and DHS to promulgate rules, under which information provided by an applicant for public assistance must be sworn to or otherwise affirmed as being true and correct to the best of the applicant's knowledge. *Insert B* ✓

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

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

3

SECTION 1. 49.141 (7) (title) of the statutes is repealed and recreated to read:

1 49.141 (7) (title) SUSPENSIONS.

2 **SECTION 2.** 49.141 (7) (a) of the statutes is renumbered 946.90 (3) and amended
3 to read:

4 946.90 (3) ~~A person who is convicted of violating sub. (6) in connection with the~~
5 Whoever violates sub. (2) by furnishing by that person of items or services for which
6 payment is or may be made under Wisconsin works Works is guilty of a Class H
7 felony.

 ****NOTE: It is not clear to me how a person could violate sub. (2) by furnishing items
or services. However, this is based on current law. You may want to confirm with DCF
how this provision is applied or interpreted under current law and clarify the language
accordingly.

8 **SECTION 3.** 49.141 (7) (b) of the statutes is repealed.

9 **SECTION 4.** 49.141 (7) (c) (intro.) and 1. of the statutes are amended to read:

10 49.141 (7) (c) (intro.) Except as provided in par. (d), in addition to the penalties
11 applicable under ~~par. (a) or (b) s. 946.90 (2) or (3)~~, a person shall be suspended from
12 participating in Wisconsin works Works for a period of 10 years, beginning on the
13 date of conviction, if the person is convicted in a federal or state court for any of the
14 following:

15 1. Violating sub. (6) (a) or s. 946.90 (2) (a) with respect to his or her identity or
16 place of residence for the purpose of receiving simultaneously from this state and at
17 least one other state assistance funded by a block grant under Title I of the Federal
18 Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

19 **SECTION 5.** 49.141 (8) of the statutes is amended to read:

20 49.141 (8) DAMAGES. If a person is convicted under ~~sub. (6) s. 946.90 (2) or (3)~~,
21 the state has a cause of action for relief against the person in an amount equal to 3
22 times the amount of actual damages sustained as a result of any excess payments
23 made in connection with the offense for which the conviction was obtained. Proof by

1 the state of a conviction under ~~sub. (6)~~ s. 946.90 (2) or (3) is conclusive proof in a civil
2 action of the state's right to damages and the only issue in controversy shall be the
3 amount, if any, of the actual damages sustained. Actual damages consist of the total
4 amount of excess payments, any part of which is paid with state funds. In a civil
5 action under this subsection, the state may elect to file a motion in expedition of the
6 action. Upon receipt of the motion, the presiding judge shall expedite the action.

7 **SECTION 6.** 49.141 (9) (title) of the statutes is repealed.

8 **SECTION 7.** 49.141 (9) (a) to (c) of the statutes are renumbered 946.90 (4) (a) to
9 (c), and 946.90 (4) (a), (b) and (c) 1., as renumbered, are amended to read:

10 946.90 (4) (a) Whoever solicits or receives ~~any remuneration in cash or in-kind~~
11 money, goods, services, or any other thing of value, in return for referring an
12 individual to a person for the furnishing or arranging for the furnishing of any item
13 or service for which payment may be made in whole or in part under Wisconsin ~~works~~
14 Works, or in return for purchasing, leasing, ordering, or arranging for or
15 recommending purchasing, leasing, or ordering any good, facility, service, or item for
16 which payment may be made in whole or in part under Wisconsin ~~works~~ Works, is
17 guilty of a Class H felony, except that, notwithstanding the maximum fine specified
18 in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

19 (b) Whoever offers or pays ~~any remuneration in cash or in-kind~~ money, goods,
20 services, or any other thing of value to any person to induce the person to refer an
21 individual to a person for the furnishing or arranging for the furnishing of any item
22 or service for which payment may be made in whole or in part under Wisconsin ~~works~~
23 Works, or to purchase, lease, order, or arrange for or recommend purchasing, leasing,
24 or ordering any good, facility, service or item for which payment may be made in
25 whole or in part under any provision of Wisconsin ~~works~~ Works, is guilty of a Class

1 H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3)
2 (h), the person may be fined not more than \$25,000.

3 (c) 1. A discount or other reduction in price obtained by a provider of services
4 or other entity under chs. 46 to 51 and 58 if the reduction in price is properly disclosed
5 and appropriately reflected in the costs claimed or charges made by the provider or
6 entity under ~~Wisconsin works~~ Works.

7 **SECTION 8.** 49.141 (10) (title) and (b) of the statutes are repealed.

8 **SECTION 9.** 49.141 (10) (a) of the statutes is renumbered 946.90 (5) and
9 amended to read:

10 946.90 (5) A provider ~~may not~~ who knowingly ~~impose~~ imposes upon a ~~recipient~~
11 participant in Wisconsin Works charges in addition to payments received by the
12 provider for services under ~~Wisconsin works~~ Works or knowingly ~~impose~~ imposes
13 direct charges upon a ~~recipient~~ participant in Wisconsin Works in lieu of obtaining
14 payment under ~~Wisconsin works~~ unless Works is guilty of a Class H felony, except
15 that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may
16 be fined not more than \$25,000. This subsection does not apply if benefits or services
17 are not provided under ~~Wisconsin works~~ Works and the ~~recipient~~ Wisconsin Works
18 participant is advised of this fact prior to receiving the service.

19 **SECTION 10.** 49.32 (8) of the statutes is amended to read:

20 49.32 (8) PERIODIC EARNINGS CHECK BY DEPARTMENT. The department shall make
21 a periodic check of the amounts earned by recipients of aid to families with dependent
22 children under s. 49.19 and by participants under ~~Wisconsin works~~ under ss. 49.141
23 to 49.161 through a check of the amounts credited to the recipient's social security
24 number. The department shall make an investigation into any discrepancy between
25 the amounts credited to a social security number and amounts reported as income

1 on the declaration application and take appropriate action under s. ~~49.95~~ 946.93
2 when warranted. The department shall use the state wage reporting system under
3 1985 Wisconsin Act 17, section 65 (1), when the system is implemented, to make
4 periodic earnings checks.

5 **SECTION 11.** 49.45 (2) (b) 7. (intro.) and a., and (11) of the statutes are amended
6 to read:

7 49.45 (2) (b) 7. (intro.) Require, as a condition of certification under par. (a) 11.,
8 all providers of a specific service that is among those enumerated under s. 49.46 (2),
9 49.47 (6) (a), or 49.471 (11), as specified in this subdivision, to file with the
10 department a surety bond issued by a surety company licensed to do business in this
11 state. Providers subject to this subdivision provide those services specified under s.
12 49.46 (2), 49.47 (6) (a), or 49.471 (11) for which providers have demonstrated
13 significant potential to violate s. ~~49.49 (1) (a), (2) (a) or (b), (3), (3m) (a), (3p), (4) (a),~~
14 ~~or (4m) (a) or~~ 946.91 (2), (3) (a) or (b), (4), (5), or (6), to require recovery under par.
15 (a) 10., or to need additional sanctions under par. (a) 13. The surety bond shall be
16 payable to the department in an amount that the department determines is
17 reasonable in view of amounts of former recoveries against providers of the specific
18 service and the department's costs to pursue those recoveries. The department shall
19 promulgate rules to implement this subdivision that specify all of the following:

20 a. Services under ~~medical assistance~~ Medical Assistance for which providers
21 have demonstrated significant potential to violate s. ~~49.49 (1) (a), (2) (a) or (b), (3),~~
22 ~~(3m) (a), (3p), (4) (a), or (4m) (a) or~~ 946.91 (2), (3) (a) or (b), (4), (5), or (6), to require
23 recovery under par. (a) 10., or to need additional sanctions under par. (a) 13.

1 **(11) PENALTY.** Any person who receives or assists another in receiving
2 assistance under this section, to which the recipient is not entitled, shall be subject
3 to the penalties under s. ~~49.95~~ ss. 946.91 and 946.93.

4 **SECTION 12.** 49.49 (1) (title) and (a) (intro.) of the statutes are repealed.

5 **SECTION 13.** 49.49 (1) (a) 1. to 4. of the statutes are renumbered 946.91 (2) (a)
6 to (d) and amended to read:

7 946.91 **(2)** (a) ~~Knowingly and willfully make~~ Intentionally makes or ~~cause~~
8 causes to be made any false statement or representation of a material fact in any
9 application for any Medical Assistance benefit or payment.

10 (b) ~~Knowingly and willfully make~~ Intentionally makes or ~~cause~~ causes to be
11 made any false statement or representation of a material fact for use in determining
12 ~~rights to such~~ eligibility for any Medical Assistance benefit or payment.

13 (c) Having knowledge of the occurrence of any event affecting the initial or
14 continued ~~right to~~ eligibility for any such Medical Assistance benefit or payment or
15 the initial or continued ~~right to~~ eligibility for any such benefit or payment of any
16 other individual in whose behalf he or she has applied for or is receiving such benefit
17 or payment, ~~conceal~~ conceals or ~~fail~~ fails to disclose such event with an intent to
18 fraudulently ~~to~~ secure such benefit or payment either in a greater amount or
19 quantity than is due or when no such benefit or payment is authorized.

20 (d) Having ~~made application~~ applied to receive any ~~such~~ Medical Assistance
21 benefit or payment for the use and benefit of another and having received it,
22 knowingly and willfully ~~convert such~~ converts the benefit or payment or any part
23 thereof to a use ~~other than for the use and~~ that is not for the benefit of such other
24 person.

25 **SECTION 14.** 49.49 (1) (b) of the statutes is repealed.

1 **SECTION 15.** 49.49 (1) (c) of the statutes is renumbered 49.49 (1d) and amended
2 to read:

3 **49.49 (1d) DAMAGES.** If any person is convicted under ~~this subsection~~ s. 946.91
4 (2), the state shall have a cause of action for relief against such person in an amount
5 3 times the amount of actual damages sustained as a result of any excess payments
6 made in connection with the offense for which the conviction was obtained. Proof by
7 the state of a conviction under ~~this section~~ s. 946.91 (2) in a civil action shall be
8 conclusive regarding the state's right to damages and the only issue in controversy
9 shall be the amount, if any, of the actual damages sustained. Actual damages shall
10 consist of the total amount of excess payments, any part of which is paid by state
11 funds. In any such civil action the state may elect to file a motion in expedition of
12 the action. Upon receipt of the motion, the presiding judge shall expedite the action.

13 **SECTION 16.** 49.49 (2) (title) and (2) (a) (title) of the statutes are repealed.

14 **SECTION 17.** 49.49 (2) (a) of the statutes is renumbered 946.91 (3) (a) and
15 amended to read:

16 **946.91 (3) (a)** ~~Any person who~~ Whoever solicits or receives ~~any remuneration,~~
17 ~~including any kickback, bribe, or rebate, directly or, indirectly, overtly, or covertly, in~~
18 ~~cash or in kind,~~ money, goods, services, or any other thing of value in return for
19 referring an individual to a person for the furnishing or arranging for the furnishing
20 of any item or service for which payment may be made in whole or in part under ~~a~~
21 ~~medical assistance program~~ Medical Assistance, or in return for purchasing,
22 leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering
23 any good, facility, service, or item for which payment may be made in whole or in part
24 under ~~a medical assistance program~~ Medical Assistance, is guilty of a Class H felony,

1 except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the
2 person may be fined not more than \$25,000.

3 SECTION 18. 49.49 (2) (b) (title) of the statutes is repealed.

4 SECTION 19. 49.49 (2) (b) of the statutes is renumbered 946.91 (3) (b) and
5 amended to read:

6 946.91 (3) (b) Whoever offers or pays ~~any remuneration including any~~
7 ~~kickback, bribe, or rebate,~~ directly or, indirectly, overtly, or covertly, ~~in cash or in kind~~
8 money, goods, services, or any other thing of value to any person to induce such
9 person to refer an individual to a person for the furnishing or arranging for the
10 furnishing of any item or service for which payment may be made in whole or in part
11 under ~~a medical assistance program~~ Medical Assistance, or to purchase, lease,
12 order, or arrange for or recommend purchasing, leasing, or ordering any good,
13 facility, service or item for which payment may be made in whole or in part under
14 ~~a medical assistance program~~ Medical Assistance, is guilty of a Class H felony,
15 except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the
16 person may be fined not more than \$25,000.

17 SECTION 20. 49.49 (2) (c) (title) of the statutes is repealed.

18 SECTION 21. 49.49 (2) (c) of the statutes is renumbered 946.91 (3) (c) and
19 amended to read:

20 946.91 (3) (c) This subsection ~~shall~~ does not apply to any of the following:

21 1. A discount or other reduction in price obtained by a provider of services or
22 other entity under chs. 46 to 51 and 58 if the reduction in price is properly disclosed
23 and appropriately reflected in the costs claimed or charges made by the provider or
24 entity under ~~a medical assistance program~~ Medical Assistance.

1 2. ~~Any~~ An amount paid by an employer to an employee who has a bona fide
2 employment relationship with such employer for employment in the provision of
3 covered items or services.

4 **SECTION 22.** 49.49 (3) (title) of the statutes is repealed.

5 **SECTION 23.** 49.49 (3) of the statutes is renumbered 946.91 (4) and amended
6 to read:

7 946.91 (4) ~~No person may~~ Whoever knowingly and willfully ~~make~~ makes or
8 ~~cause~~ causes to be made, or ~~induce~~ induces or ~~seek~~ seeks to induce the making of, any
9 false statement or representation of a material fact with respect to the conditions or
10 operation of any institution or facility in order that such institution or facility may
11 qualify either upon initial certification or upon recertification as a hospital, skilled
12 nursing facility, intermediate care facility, or home health agency. ~~A person who~~
13 ~~violates this subsection~~ is guilty of a Class H felony, except that, notwithstanding the
14 maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than
15 \$25,000.

16 **SECTION 24.** 49.49 (3m) (title) of the statutes is repealed.

17 **SECTION 25.** 49.49 (3m) (a) of the statutes is renumbered 946.91 (5), and 946.91
18 (5) (intro.), (a) and (b), as renumbered, are amended to read:

19 946.91 (5) (intro.) ~~No provider may~~ Whoever knowingly ~~impose~~ imposes upon
20 a Medical Assistance recipient charges in addition to payments received for services
21 under ss. 49.45 to 49.471 or knowingly ~~impose~~ imposes direct charges upon a
22 recipient in lieu of obtaining payment under ss. 49.45 to 49.471 ~~except under the~~
23 ~~following conditions~~ is guilty of a Class H felony, except that, notwithstanding the
24 maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than
25 \$25,000. This subsection does not apply under any of the following circumstances:

1 (a) Benefits or services are not provided under s. 49.46 (2) or 49.471 (11) and
2 the Medical Assistance recipient is advised of this fact prior to receiving the service.

3 (b) ~~If an An~~ applicant is determined to be eligible retroactively under s. 49.46
4 (1) (b), 49.47 (4) (d), or 49.471 ~~and~~, a provider bills the applicant directly for services
5 and benefits rendered during the retroactive period, ~~the provider shall~~ the provider,
6 upon notification of the applicant's retroactive eligibility, ~~submit claims~~ submits a
7 claim for payment under s. 49.45 for covered services or benefits rendered to the
8 recipient during the retroactive period. ~~Upon receipt of payment under s. 49.45, the~~
9 ~~provider shall reimburse, and the provider reimburses~~ the recipient or other person
10 who has made prior payment to the provider for services provided to the recipient
11 during the retroactive eligibility period, by the amount of the prior payment made
12 upon receipt of payment under 49.45.

13 **SECTION 26.** 49.49 (3m) (b) of the statutes is repealed.

14 **SECTION 27.** 49.49 (3p) (title) of the statutes is amended to read:

15 49.49 (3p) (title) ~~OTHER~~ PROHIBITED PROVIDER CHARGES.

16 **SECTION 28.** 49.49 (4) (title) of the statutes is repealed.

17 **SECTION 29.** 49.49 (4) (a) and (b) of the statutes are consolidated, renumbered
18 946.91 (6) and amended to read:

19 946.91 (6) ~~No person~~ Whoever, in connection with ~~the medical assistance~~
20 ~~program~~ Medical Assistance when the cost of the services provided to the patient is
21 paid for in whole or in part by the state, ~~may knowingly and willfully charge, solicit,~~
22 ~~accept or receive~~ intentionally charges, solicits, accepts, or receives, in addition to
23 any amount otherwise required to be paid under ~~a medical assistance program~~
24 Medical Assistance, any gift, money, donation, or other consideration, other than a
25 charitable, religious, or philanthropic contribution from an organization or from a

1 person unrelated to the patient, as a precondition of admitting a patient to a hospital,
2 skilled nursing facility, or intermediate care facility, or as a requirement for the
3 patient's continued stay in such a facility. ~~(b) A person who violates this subsection~~
4 is guilty of a Class H felony, except that, notwithstanding the maximum fine specified
5 in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

6 **SECTION 30.** 49.49 (5) of the statutes is amended to read:

7 **49.49 (5) COUNTY COLLECTION.** Any county may retain ~~15%~~ 15 percent of state
8 medical assistance funds that are recovered due to the efforts of a county employee
9 or officer or, if the county initiates action by the department of justice, due to the
10 efforts of the department of justice under s. ~~49.495~~ 49.846. This subsection applies
11 only to recovery of medical assistance that was provided as a result of fraudulent
12 activity by a recipient or by a provider.

***NOTE: Section 49.49 (5) allows a county to retain 15 percent of state medical assistance funds that are recovered due to the efforts of a county employee or officer or, if the county initiates action by the department of justice, due to the efforts of the department of justice under this subsection. There are similar provisions that allow counties and tribes to retain a percentage of public assistance funds that are recovered due to the efforts of an employee of the county or tribe. See ss. 49.195 (4) (a), 49.497 (2) (a), 49.793 (2) (a), and 49.847 (3) (a). Please let me know if you would like to add language similar to what is in s. 49.49 (5), which allows a county to retain funds if the county initiates action by the department of justice, to the collection provisions that apply to other public assistance programs.

13 **SECTION 31.** 49.49 (7) (d) of the statutes is amended to read:

14 **49.49 (7) (d)** A commission's imposition of an assessment described under par.
15 (b), a member's payment of the assessment as described under par. (c), and
16 acceptance of the payment by the commission do not constitute conduct prohibited
17 under ~~sub. (4) 946.91 (6)~~ or prohibited under s. DHS 106.04 (3), Wis. Adm. Code, in
18 effect on May 26, 2010. It is the intent of the legislature to create a mechanism
19 whereby 2 or more political subdivisions may share in the operation, use, and

1 funding of a nursing home or intermediate care facility without violating 42 USC
2 1320a-7b (d) or 42 USC 1396a (a) (25) (C).

3 **SECTION 32.** 49.495 (title) of the statutes is renumbered 49.846 (title).

4 **SECTION 33.** 49.495 of the statutes is renumbered 49.846 (2) and amended to
5 read:

6 49.846 (2) The department of justice or the district attorney may institute,
7 manage, control, and direct, in the proper county, any prosecution for violation of
8 criminal laws affecting ~~the medical~~ a public assistance program, including ~~but not~~
9 ~~limited to~~ laws in this chapter, chs. 939 to 951 relating to medical assistance
10 ~~contained in this subchapter~~ Medical Assistance, Wisconsin Works, the food stamp
11 program, and emergency assistance under s. 49.138, and laws affecting the health,
12 safety, and welfare of public assistance program recipients of ~~medical assistance~~. For
13 this purpose the department of justice shall have and exercise all powers conferred
14 upon district attorneys in such cases. ~~The~~ If a prosecution under this section involves
15 a person holding a license granted by the medical examining board or an interested
16 affiliated credentialing board, the department of justice or district attorney shall
17 notify the medical examining board or the interested affiliated credentialing board
18 of ~~any such~~ the prosecution of ~~a person holding a license granted by the board or~~
19 ~~affiliated credentialing board~~.

20 **SECTION 34.** 49.688 (9) (a) of the statutes is amended to read:

21 49.688 (9) (a) The department shall promulgate rules relating to prohibitions
22 on fraud that are substantially similar to applicable provisions under s. ~~49.49 (1) (a)~~
23 946.91 (2).

24 **SECTION 35.** 49.795 (title) and (1) (intro.) of the statutes are renumbered 946.92
25 (title) and (1) (intro.).

1 **SECTION 36.** 49.795 (1) (a), (b), (c), (d) and (e) of the statutes are renumbered
2 946.92 (1) (a), (b), (c), (d) and (e), and 946.92 (1) (b), (c) and (d), as renumbered, are
3 amended to read:

4 946.92 (1) (b) “Food” means items ~~which~~ that may be purchased using food
5 ~~coupons~~ stamp program benefits under 7 USC 2012 ~~(g)~~ and 2016 (b).

6 (c) “Food stamp program” means the federal food stamp program under 7 USC
7 2011 to 2029 2036a.

8 (d) “Supplier” means a retail grocery store or other person authorized by the
9 federal department of agriculture to accept food ~~coupons~~ stamp program benefits in
10 exchange for food under the food stamp program.

11 **SECTION 37.** 49.795 (1) (cm) of the statutes is repealed.

12 **SECTION 38.** 49.795 (2) to (6) of the statutes are renumbered 946.92 (2) (a) to
13 (f), and 946.92 (2) (c), (d), (e) and (f), as renumbered, are amended to read:

14 946.92 (2) (c) No person may knowingly issue food ~~coupons~~ stamp program
15 benefits to a person who is not an eligible person or knowingly issue food ~~coupons~~
16 stamp program benefits to an eligible person in excess of the amount for which the
17 person’s household is eligible.

18 (d) No eligible person may knowingly transfer food ~~coupons~~ stamp program
19 benefits except to purchase food from a supplier or knowingly obtain or use food
20 ~~coupons~~ stamp program benefits for which the person’s household is not eligible.

21 (e) No supplier may knowingly obtain food ~~coupons~~ stamp program benefits
22 except as payment for food or knowingly obtain food ~~coupons~~ stamp program benefits
23 from a person who is not an eligible person.

24 (f) No unauthorized person may knowingly obtain, possess, transfer, or use food
25 ~~coupons~~ stamp program benefits.

1 **SECTION 39.** 49.795 (7) of the statutes is repealed.

2 **SECTION 40.** 49.795 (8) (a), (b) and (c) of the statutes are repealed.

3 **SECTION 41.** 49.795 (8) (d) 1. of the statutes is renumbered 946.92 (3) (b) and
4 amended to read:

5 946.92 (3) (b) In addition to the penalties applicable under par. (a), ~~(b) or (c)~~,
6 the court shall suspend a person who violates ~~this section~~ sub. (2) from participation
7 in the food stamp program as follows:

8 1. For a first ~~offense~~ conviction under this section, not less than one year. ~~The~~
9 ~~court may extend the suspension by~~ and not more than ~~18 months~~ 2 years and 6
10 months.

11 2. For a 2nd ~~offense~~ conviction under this section, not less than 2 years. ~~The~~
12 ~~court may extend the suspension by~~ and not more than ~~18 months~~ 3 years and 6
13 months.

14 3. For a 3rd ~~offense~~ conviction under this section, permanently.

15 **SECTION 42.** 49.795 (8) (d) 1m. of the statutes is renumbered 946.92 (3) (c) and
16 amended to read:

17 946.92 (3) (c) In addition to the penalties applicable under par. (a), ~~(b) or (c)~~,
18 a court shall permanently suspend from the food stamp program a person who has
19 been convicted of an offense under 7 USC 2024 (b) or (c) involving an item covered
20 by 7 USC 2024 (b) or (c) having a value of \$500 or more.

21 **SECTION 43.** 49.795 (8) (d) 2. of the statutes is renumbered 49.796 and amended
22 to read:

23 **49.796 Food stamp reinstatement.** The A person may apply to ~~the a~~
24 multicounty consortium, as defined in s. 49.78 (1) (br), or ~~the a~~ federally recognized
25 American Indian tribal governing body or, if the person is a supplier, as defined in

1 s. 946.92 (1) (d), to the federal department of agriculture for reinstatement of benefits
2 following ~~the~~ a period of suspension imposed under s. 946.92, if the suspension is not
3 permanent.

4 **SECTION 44.** 49.795 (8) (e) and (f) of the statutes are renumbered 946.92 (3) (d)
5 and (e) and amended to read:

6 946.92 (3) (d) 1. If ~~a court finds that~~ a person ~~traded~~ violated sub. (2) by trading
7 a controlled substance, as defined in s. 961.01 (4), for food ~~coupons~~ stamp program
8 benefits, the court shall suspend the person from participation in the food stamp
9 program as follows:

10 a. Upon ~~the first such finding~~ a first conviction, for 2 years.

11 b. Upon ~~the~~ a 2nd ~~such finding~~ conviction, permanently.

12 2. If ~~a court finds that~~ a person violated sub. (2) by trading traded firearms,
13 ammunition, or explosives for food ~~coupons~~ stamp program benefits, the court shall
14 suspend the person permanently from participation in the food stamp program.

15 (e) Notwithstanding ~~par. (d)~~ pars. (b) and (c), in addition to the penalties
16 applicable under par. (a), ~~(b) or (c)~~, the court shall suspend from the food stamp
17 program for a period of 10 years a person who violates sub. (2) by fraudulently
18 misstates misstating or misrepresents misrepresenting his or her identity or place
19 of residence for the purpose of receiving multiple benefits simultaneously under the
20 food stamp program.

21 **SECTION 45.** 49.797 (2) (a) of the statutes is amended to read:

22 49.797 (2) (a) Notwithstanding s. 46.028 and except as provided in par. (b) and
23 sub. (8), the department shall administer a statewide program to deliver food stamp
24 benefits to recipients of food stamp benefits by an electronic benefit transfer system.
25 All suppliers, as defined in s. ~~49.795~~ 946.92 (1) (d), may participate in the delivery

1 of food stamp benefits under the electronic benefit transfer system. The department
2 shall explore methods by which nontraditional retailers, such as farmers' markets,
3 may participate in the delivery of food stamp benefits under the electronic benefit
4 transfer system.

5 SECTION 46. 49.835 of the statutes is created to read:

6 49.835 Affirmation of statements in applications. (1) A person who
7 makes a statement in a written application for any aid or benefit provided under this
8 chapter is considered to have made an admission as to the existence, correctness, or
9 validity of any fact stated. Such a statement is prima facie evidence against the
10 person who made it in any complaint, information, or indictment, or in any action
11 brought for enforcement of any provision of this chapter.

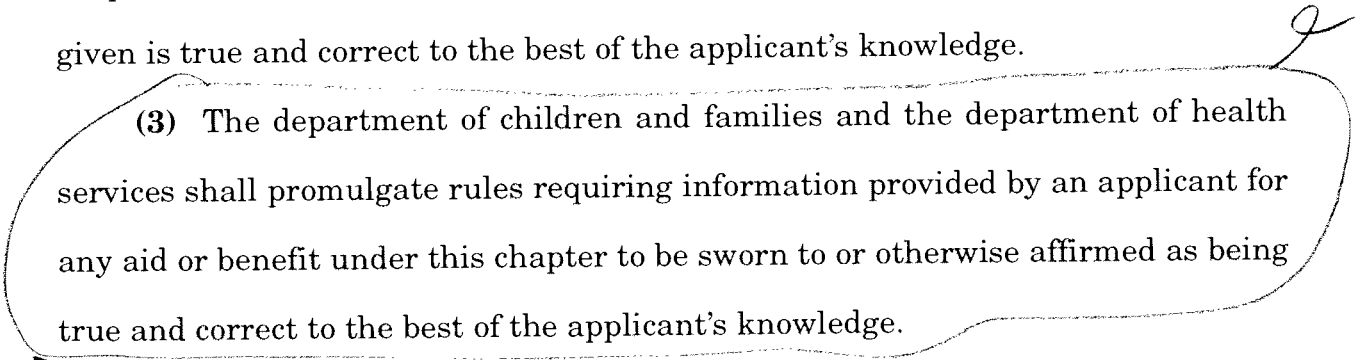
12 (2) An employee of a county department, a Wisconsin Works agency, a
13 multicounty consortium, the department of health services, or the department of
14 children and families who accepts an application for any aid or benefit under this
15 chapter has the authority to administer an oath to the applicant that the information
16 given is true and correct to the best of the applicant's knowledge.

17 (3) The department of children and families and the department of health
18 services shall promulgate rules requiring information provided by an applicant for
19 any aid or benefit under this chapter to be sworn to or otherwise affirmed as being
20 true and correct to the best of the applicant's knowledge.

21 SECTION 47. 49.846 (1) of the statutes is created to read:

22 49.846 (1) In this section, "public assistance program" means any program
23 administered by the department of health services or the department of children and
24 families under this chapter under which the department administering the program
25 provides services, benefits, or other assistance to individuals or families.

Insert 17-20



1 **SECTION 48.** 49.95 of the statutes is repealed.

2 **SECTION 49.** 59.54 (23) of the statutes is amended to read:

3 59.54 (23) PUBLIC ASSISTANCE; FALSE REPRESENTATION. The board may enact and
4 enforce an ordinance to prohibit conduct that is the same as or similar to conduct that
5 is prohibited by s. ~~49.95 (1)~~ 946.93 (2) and provide a forfeiture for a violation of the
6 ordinance.

7 **SECTION 50.** 940.11 (2) of the statutes is amended to read:

8 940.11 (2) Whoever hides or buries a corpse, with intent to conceal a crime or
9 avoid apprehension, prosecution, or conviction for a crime or notwithstanding s.
10 ~~49.141 (7), 49.49 (1), or 49.795~~ 946.90 (2) or (3), 946.91 (2), 946.92, or 946.93 (2) or
11 (3) with intent to collect benefits under one of those sections the assistance program
12 for families with dependent children, administered under ss. 49.141 to 49.161, the
13 Medical Assistance program administered under subch. IV of ch. 49, or the food
14 stamp program, as defined in s. 49.79 (1) (c), is guilty of a Class G felony.

15 **SECTION 51.** 946.90 (title) of the statutes is created to read:

16 **946.90 (title) Wisconsin Works fraud.**

17 **SECTION 52.** 946.90 (1) of the statutes is created to read:

18 946.90 (1) In this section:

19 (a) “Provider” means a Wisconsin Works agency or a person that contracts with
20 a Wisconsin Works agency to provide services to a participant in Wisconsin Works.

21 (b) “Wisconsin Works” means the assistance program for families with
22 dependent children, administered under ss. 49.141 to 49.161.

23 (c) “Wisconsin Works agency” has the meaning given in s. 49.001 (9).

24 **SECTION 53.** 946.90 (2) of the statutes is created to read:

1 946.90 (2) Whoever does any of the following is guilty of a Class A
2 misdemeanor:

3 (a) Intentionally makes or causes to be made any false statement or
4 representation of a material fact in any application for or receipt of any Wisconsin
5 Works benefit or payment.

6 (b) Having knowledge of the occurrence of any event affecting the initial or
7 continued eligibility for a Wisconsin Works benefit or payment under Wisconsin
8 Works, conceals or fails to disclose that event with an intent to fraudulently secure
9 a Wisconsin Works benefit or payment either in a greater amount or quantity than
10 is due or when no such benefit or payment is authorized.

11 **SECTION 54.** 946.91 (title), (1) and (2) (intro.) of the statutes are created to read:

12 **946.91 (title) Medical Assistance fraud. (1)** In this section:

13 (a) "Facility" means a nursing home or a community-based residential facility
14 that is licensed under s. 50.03 and that is certified by the department of health
15 services as a provider of aid under Medical Assistance.

16 (b) "Medical Assistance" means the program providing aid under subch. IV of
17 ch. 49, except ss. 49.468 and 49.471.

18 (c) "Provider" means a person, corporation, limited liability company,
19 partnership, incorporated business, or professional association, and any agent or
20 employee thereof, who provides services under Medical Assistance.

21 **(2)** (intro.) Whoever does any of the following is guilty of a Class H felony, except
22 that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may
23 be fined not more than \$25,000:

24 **SECTION 55.** 946.92 (3) (a) of the statutes is created to read:

25 946.92 (3) (a) Whoever violates sub. (2) is subject to the following penalties:

- 1 1. If the value of the food stamp program benefits does not exceed \$100, a Class
2 B misdemeanor.

 ***NOTE: This is essentially the recreation of s. 49.795 (8) (a) 1. and (b) 1. However, because the penalty is now in the criminal code, it needs to be a classified penalty, i.e. a certain class of misdemeanor or felony. For purposes of this draft, I based the classification on the existing fine under s. 49.795 (8), which is up to \$1,000. Please note as a Class B misdemeanor, the amount of possible jail time is reduced from not more than one year, under current law, to no more than 90 days. If this is not consistent with your intent, please let me know what the penalty should be if the value of the benefits do not exceed \$100. Also, please note that there is not a separate provision for 2nd or subsequent offenses at this value level because the penalty is the same for first and subsequent offenses under current law.

- 3 2. Except as provided in subd. 3., if the value of the food stamp program benefits
4 exceeds \$100, but is less than \$5,000, a Class I felony.

- 5 3. If the value of the food stamp program benefits exceeds \$100, but is less than
6 \$5,000, and the person has a prior conviction under this section, a Class H felony.

- 7 4. If the value of the food stamp program benefits is \$5,000 or more, a Class G
8 felony.

9 **SECTION 56.** 946.93 of the statutes is created to read:

10 **946.93 Public assistance fraud.** (1) In this section, “public assistance”
11 means any aid, benefit, or services provided under ch. 49.

12 (2) Whoever intentionally makes or causes to be made any false statement or
13 representation of material fact in any application for or receipt of public assistance
14 is guilty of a Class H felony.

15 (3) No person may do any of the following:

16 (a) Having knowledge of an event affecting the initial or continued eligibility
17 for public assistance, conceal or fail to disclose that event with an intent to
18 fraudulently secure public assistance, including payment either in a greater amount
19 or quantity than is due or when no such benefit or payment is authorized.

1 (b) Receive any income or assets and fail to notify the public assistance agency
2 within 10 days after receiving the income or assets, unless a different time period is
3 required under the applicable public assistance program.

4 (c) Fail to notify the public assistance agency within 10 days of any change in
5 circumstances for which notification by the recipient must be provided under law,
6 unless a different time period is required under the applicable public assistance
7 program.

8 (d) Receive a voucher under a public assistance program for goods or services
9 and use the funding granted under the voucher for purposes that are not authorized
10 by the public assistance agency.

11 (e) Whoever violates par. (a), (b), (c), or (d) is subject to the following penalties:

12 1. If the value of the payment or benefit does not exceed \$300, a Class B
13 forfeiture.

14 2. If the value of the payment or benefit is more than \$300 but does not exceed
15 \$1,000, a Class B misdemeanor.

***NOTE: In LRB-1479, the penalty under this subdivision was a fine of not more
than \$250, jail time of up to 6 months, or both. To conform to drafting conventions in the
criminal code, I replaced this with the classified misdemeanor. A Class B misdemeanor
is a fine of not more than \$1,000 and up to 90 days in jail, or both. If you prefer a different
class of misdemeanor, please let me know.

16 3. If the value of the payment or benefit is more than \$1,000 but does not exceed
17 \$2,000, a Class A misdemeanor.

18 4. If the value of the payment or benefit is more than \$2,000 but does not exceed
19 \$5,000, a Class I felony.

20 5. If the value of the payment or benefit is more than \$5,000 but does not exceed
21 \$10,000, a Class H felony.

22 6. If the value of the payment or benefit is more than \$10,000, a Class G felony.

1 (4) A person who obtains money, goods, services, or any other thing of value
2 because he or she sends or brings a person to a county department, federally
3 recognized American Indian tribe or band, a multicounty consortium, or Wisconsin
4 Works agency for the purpose of obtaining public assistance is guilty of a Class C
5 misdemeanor.

6 (5) (a) Whoever solicits or receives money, goods, services, or any other thing
7 of value in return for referring an individual to a person for the furnishing or
8 arranging for the furnishing of any item or service for which a public assistance
9 payment may be made in whole or in part, or in return for purchasing, leasing,
10 ordering, or arranging for or recommending purchasing, leasing, or ordering any
11 good, facility, service, or item for which public assistance payment may be made in
12 whole or in part, is guilty of a Class H felony, except that, notwithstanding the
13 maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than
14 \$25,000.

15 (b) Whoever offers or pays money, goods, services, or any other thing of value
16 to any person to induce the person to refer an individual to a person for the furnishing
17 or arranging for the furnishing of any item or service for which public assistance
18 payment may be made in whole or in part, or to purchase, lease, order, or arrange for
19 or recommend purchasing, leasing, or ordering any good, facility, service, or item for
20 which public assistance payment may be made in whole or in part, is guilty of a Class
21 H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3)
22 (h), the person may be fined not more than \$25,000.

23 (c) This subsection does not apply to any of the following:

24 1. A discount or other reduction in price obtained by a provider of services or
25 other entity under chs. 46 to 51 and 58 if the reduction in price is properly disclosed

1 and appropriately reflected in the costs claimed or charges made by the provider or
2 entity under a public assistance program.

3 2. An amount paid by an employer to an employee who has a bona fide
4 employment relationship with the employer for employment in the provision of
5 covered items or services.

6 (6) Whoever makes any statement in a written application for public
7 assistance is considered to have made an admission as to the existence, correctness,
8 or validity of any fact stated. Such a statement is prima facie evidence against the
9 person who made it in any complaint, information, or indictment, or in any action
10 brought for enforcement of any provision of this section or ch. 49.

11 **SECTION 57. Nonstatutory provisions.**

12 (1) PUBLIC ASSISTANCE APPLICATIONS; RULES.

13 (a) The department of children and families shall present the statement of
14 scope of the rules required under section 49.835 (3) of the statutes, as created by this
15 act, to the governor for the approval under section 227.135 (2) of the statutes no later
16 than the 30th day after the effective date of this paragraph. The department of
17 children and families shall submit in proposed form the rules required under section
18 49.835 (3) of the statutes, as created by this act, to the legislative council staff under
19 section 227.15 (1) of the statutes no later than the first day of the ¹⁰th month
20 beginning after the governor approves the statement of scope for the rules.

***NOTE: Because this draft is based on a Leg. Council study committee draft that was drafted prior to 2011 Wisconsin Act 21, which made significant changes to the rule-making process, whether to require a scope statement by a certain date or whether to exempt these rules from the scope statement was not addressed in the base draft. Currently, this paragraph requires DCF to submit a statement of scope to the governor by a date certain and then to submit proposed rules to the Legislative Council within a certain time frame based on when the statement of scope is approved. Please let me know if you would prefer different time periods for either requirement or whether you prefer to exempt the rules from the statement of scope requirement. The same issue applies to the rules promulgated by DHS under s. 49.835 (3).

1 (b) The department of health services shall present the statement of scope of
 2 the rules required under section 49.835 (3) of the statutes, as created by this act, to
 3 the governor for the approval under section 227.135 (2) of the statutes no later than
 4 the 30th day after the effective date of this paragraph. The department of health
 5 services shall submit in proposed form the rules required under section 49.835 (3) of
 6 the statutes, as created by this act, to the legislative council staff under section
 7 227.15 (1) of the statutes no later than the first day of the ~~5~~¹⁰th month beginning after
 8 the governor approves the statement of scope for the rules.

9 **SECTION 58. Initial applicability.**

10 (1) PUBLIC ASSISTANCE APPLICATIONS. The treatment of section 49.835 of the
 11 statutes first applies to applications for aid or benefits under chapter 49 of the
 12 statutes that are received by the department of health services or the department of
 13 children and families on the effective date of this subsection.

14 (2) PUBLIC ASSISTANCE FRAUD. The treatment of section 946.93 of the statutes
 15 first applies to acts and omissions that occur on the effective date of this subsection.

16 (END)

d-note
↓

Sub 24-8
17
→

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1949/P2ins
PJK:.....

INSERT A

^{no ft} In addition, the bill adds ^{e 12} twelve employee positions to DCF[✓] for the purpose of performing functions related to field auditing, risk management assessment, quality assurance, and asset collection as a tool for collecting debts.[✓]

(END OF INSERT A)

INSERT B

^{no ft} providing standards and procedures for the administration of such an oath ~~#~~²⁰

(END OF INSERT B)

INSERT 17-20

1 (3)[✓] The department of children and families[✓] and the[✓] department of health
2 services shall promulgate rules that specify standards and procedures for the
3 administration of an oath to an applicant for any aid or benefit under this[✓] chapter
4 that the information provided by the applicant is true and correct to the best of the
5 applicant's knowledge.[✓]

(END OF INSERT 17-20)

INSERT 24-8

6 ~~#~~^Q RISK MANAGEMENT, QUALITY ASSURANCE, AND DEBT COLLECTION.[✓] The authorized
7 FTE positions for the department of children and families are increased by[✓] 3.0 FED
8 positions, to be funded from the appropriation under section 20.437[✓] (1) (n) of the
9 statutes, for the purpose of performing functions related to field auditing, risk
10 management assessment, quality assurance, and asset collection.[✓]

11 **SECTION 1. Fiscal changes.**

12 (1) RISK MANAGEMENT, QUALITY ASSURANCE, AND DEBT COLLECTION.[✓] In the schedule
13 under section 20.005 (3) of the statutes for the appropriation to the department of



Ins 24-8 contd

1 children and families[✓] under section 20.437 (1) (a)[✓] of the statutes, as affected by the
2 acts of 2013, the dollar amount is increased by \$643,000[✓] for the first fiscal year of the
3 fiscal biennium in which this subsection[✓] takes effect to increase the authorized FTE
4 positions for the department by 9.0 GPR[✓] positions for functions related to field
5 auditing, risk management assessment, quality assurance, and asset collection[✓]. In
6 the schedule under section 20.005 (3) of the statutes for the appropriation to the
7 department of children and families[✓] under section 20.437 (1) (a)[✓] of the statutes, as
8 affected by the acts of 2013, the dollar amount is increased by \$782,300[✓] for the second
9 fiscal year of the fiscal biennium in which this subsection takes effect to provide
10 funding for the positions authorized under this subsection[✓].

(END OF INSERT 24-8)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1949/P2dn

PJK:..... jld

v m is new

date

This version of the draft adds the position authorizations. ✓ Since I was given only the appropriation sections funding the new positions, the dollar amount increases, and the number of employee positions for each appropriation, I could not break down what functions each appropriation funds. Therefore, I provided general language that is the same for each appropriation. If you need a more specific breakdown per appropriation, or if you want to modify the description of the employee functions, please let me know how you want to do so. ✓

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

5-3 by phone, note from Darling's Office
5/6

✓ (1) Sec 46 → class A misdemeanor to be
946.90(2) ~~46~~ consistent w/ 946.90(2)(a)

all public assist programs included
in bill

✓ (2) * Sec 33 → public assistance program
(don't list separate programs)

Sec 51 & 53 add to def of provider
entity that collect w's share

✓ (3) "entity that provides ^{benefits} childcare
for children under 8 years"

Kahler, Pam

From: Kitzman, Nick
Sent: Monday, May 06, 2013 2:38 PM
To: Kahler, Pam
Subject: Fraud Bill

Categories: Red Category

Hi Pam,
I have no more additions as of yet from DHS. If you could please get started on the things we discussed, I'll get you the information from DHS as soon as we get it.

Thanks,
Nick

Nick Kitzman
Office of Senator Alberta Darling
(608) 266-5830
nick.kitzman@legis.wisconsin.gov